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News Headline: CLIMATE COUNTDOWN: When's a warming treaty not a treaty?

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News Headline: Court rules EPA leader must give deposition in coal case |

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News Headline: Court rules EPA leader must give deposition in coal case |

Outlet Full Name: Associated Press
News Text: WHEELING, W.Va. (AP) - A federal judge has ruled U.S. Environmental Protection Agency Administrator Gina McCarthy must give a deposition in a lawsuit over the impact of regulations on jobs.

U.S. District Judge John Preston Bailey in Wheeling, West Virginia, wrote Thursday that there's no viable alternative to deposing McCarthy in top coal producer Murray Energy's lawsuit.

EPA spokeswoman Melissa J. Harrison said in an email late Thursday that the agency disagrees with the judge's decision. Harrison said the company has not shown that McCarthy "has unique knowledge essential to their case or that the information they seek is unavailable from other sources."

In the lawsuit, Murray asserts the EPA has shirked its obligation to conduct job-loss analyses on Clean Air Act regulations.

In this case, the agency says it has conducted continuing evaluations.

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News Headline: SUPREME COURT REVIEW OF CHESAPEAKE TMDL COULD TEST EPA'S DEFERENCE |

Outlet Full Name: Inside EPA
News Text: A pending petition for the Supreme Court to scrap EPA's landmark multi-state Chesapeake Bay water cleanup plan could give the justices a chance to definitively weigh the level of deference EPA should receive in interpreting the Clean Water Act (CWA), following rulings where some justices have suggested narrowing deference to agencies.

If the court does agree to review the Chesapeake Bay lawsuit, one industry attorney says, it would follow a line of cases where "you can see that the court is struggling

with deference, period. Certainly with agencies that are essentially deferring to themselves. With some of the judges, there's a level of un-comfort there."

But the Department of Justice's (DOJ) top environmental official said in Nov. 10 speech to the American Bar Association (ABA) that reports of the justices' hostility to agency deference "have been greatly exaggerated."

Agriculture and homebuilding groups' petition for certiorari in American Farm Bureau Federation (AFBF), et al. v. EPA, et al., filed Nov. 6, casts the case as a successor to recent decisions where a majority of the high court refused to defer to agencies' readings of their statutory authority, and a chance to explicitly constrain EPA's authority to broadly interpret the CWA, which in turn could change the course of litigation over other water rules.

AFBF and its allies are asking the justices to overturn a July 6 opinion by a unanimous three-judge panel of the U.S. Court of Appeals for the 3rd Circuit that deferred to EPA's reading of the CWA to back its authority on the Chesapeake TMDL. The decision was seen as a major victory for the agency, paving the way for the cleanup plan's implementation, and for it to potentially serve as a model for other interstate water cleanup efforts.

The petition says EPA's reading of the water law that led to the agency issuing the multi-state total maximum daily load (TMDL) for the Chesapeake Bay deserves no deference because it would "interfere with the federal/state balance" established in the water law. For support, the petition cites the Supreme Court's 6-3 June 25 decision on health care in King v. Burwell, where it denied the Obama administration deference on its reading of the law.

"[W]hen an issue is one 'of deep "economic and political significance" that is central to [the] statutory scheme,' it is reasonable to assume that 'had Congress wished to assign [the] question to an agency,' it 'would have done so expressly,'" the industry groups quote from Chief Justice John Roberts' opinion in King.

If the justices agree to take up AFBF, it could give them an opportunity to expand on King, and related cases where they cut back on deference to executive agencies, and to explain how those cases apply to the water law in particular.

Any new ruling on EPA's authority to interpret the CWA could play a major role in other regulatory challenges, especially the pending litigation over the agency's rule governing the definition of "waters of the United States" that are subject to the law's requirements, the industry attorney says. "This plays in with the Waters of the U.S. [rule] and everything else. Deference questions touch on everything," the attorney continues.

The petition says the 3rd Circuit was wrong to back EPA's interpretation of the CWA as allowing it to set separate limits for point and nonpoint sources despite the CWA

generally leaving regulation of nonpoint sources to states; to set pollution allocations for individual geographic areas rather than an overall level for the entire watershed; and to craft a timeline for implementation with mandates for "reasonable assurance" that the states will reach their targets.

"The deep economic and political significance of the issue presented here cannot be doubted. The power to set source limits for nutrients and sediment amounts to nothing short of the power to prohibit certain land uses in certain places. The power to set deadlines and demand 'reasonable assurance' of implementation -- without regard to cost or feasibility -- means the power to impose devastating social and economic harm," the petition says. Relevant documents are available on InsideEPA.com. (Doc. ID: 186322)

Most TMDLs do not involve the in-depth implementation schemes and pollution loading allocations used in the Chesapeake plan. But a ruling that backs the challengers' claim that the agency lacks authority to set limits on nonpoint sources of pollution in the plans could call into question the agency's long-standing practice of specifying separate allowable discharge totals for point and nonpoint sources.

Court watchers have pointed to recent high court rulings as markers for some justices potentially trying to limit the landmark 1984 deference ruling Chevron, Inc. v. Natural Resources Defense Council. That case established a test for deference that says when a statute is ambiguous courts will generally defer to an agency's interpretation of the law as long as that reading is "reasonable."

Recent decisions that the observers cite including King as well as the court's 5-4 June 29 decision in Michigan v. EPA that found EPA erred by not assessing costs in its initial finding that a utility air toxics rule was "appropriate and necessary" under the Clean Air Act.

For instance, Harvard law professor Jody Freeman wrote in a blog post shortly after the rulings that Michigan "portends a potentially radical shift" in how courts consider EPA's reading of the air law. She also said that King could "mean that more policy decisions fall outside the Chevron framework, and that agency regulations that might once have received deference will be struck down more of the time."

King emphasized that situations exist where statutory ambiguity is too fundamental for the agency to decide, while Michigan held that EPA's reading of "appropriate and necessary" was unreasonable, Freeman wrote.

The industry attorney says, "I'm not necessarily sure the underlying doctrine Chevron is changing, so much as different courts and different judges following their more subjective views of when deference is appropriate. . . . But that can still have big impacts, because the practical difference between measured and unfettered deference is so great."

Along with the King and Michigan majority decisions that denied agencies deference, Justice Clarence Thomas in concurring opinions has charged that Chevron itself is unlawful because it represents an impermissible delegation of judicial power to agencies.

But a second attorney who specializes in environmental law says that even the conservative justices uncomfortable with broad deference in general might wait for a better vehicle for their concerns rather than take up AFBF.

"Even if those who have raised the possibility that the Supreme Court might want to limit Chevron are right, this does not seem to be the right vehicle for it. . . . They may be applying Chevron in a more critical fashion, but they're not abandoning it at all, as some might have said," the second attorney says.

That attorney continues that the fact that elements of the Chesapeake TMDL industry hopes to overturn would also call past plans into question cuts against high court review of the case, because those elements are no longer "controversial" at this point. "This is not like the Clean Power Plan -- this is not EPA dramatically pushing the boundaries of what the Clean Water Act is about," the attorney says, referring to the agency's sweeping first-time regulation of existing power plants' greenhouse gas emissions that states and industry hope the Supreme Court will eventually scrap.

Meanwhile, in a Nov. 10 lecture hosted by the ABA in Washington, D.C., Assistant Attorney General John Cruden, who heads DOJ's environment division, said reports of the justices' hostility to Chevron "have been greatly exaggerated," though he did not address the AFBF suit in particular.

"[E]very current Supreme Court justice has applied Chevron at some stage to justify their decisions. That includes Thomas," he said. -- David LaRoss

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News Headline: EPA EYES APRIL 2020 FOR FINAL DECISION ON FIRST-TIME JOINT NOX-SOX NAAQS |

Outlet Full Name: Inside EPA
News Text: EPA is planning to release in April 2020 a final decision on whether to launch a first-time joint "secondary" national ambient air quality standard (NAAQS) to reduce environmental harms from nitrogen oxides (NOx) and sulfur oxides (SOx), a standard that some scientists have cautioned might be too difficult to implement.

In a Nov. 9 Federal Register notice EPA announced its draft integrated review plan (IRP) for the NOx-SOx NAAQS review, which includes a timeline for the assessment. Under the agency's plan it would release in July next year a first draft of an integrated science assessment (ISA) -- a comprehensive review of existing policy-

relevant science on NOx and SOx emissions. The notice is available on InsideEPA.com. (Doc. ID: 186354)

EPA's Clean Air Scientific Advisory Committee (CASAC) would then review the ISA and those comments would help inform a risk and exposure assessment slated for release in November 2016, providing quantitative characterizations of exposures and associated risks to the environment from NOx and SOx emissions.

That review will eventually help inform the agency's policy assessment, in which EPA will float options for setting the first-time joint standard. A first draft of the assessment is due in February 2018, with a notice of proposed rulemaking set for May 2019 and the final NAAQS decision to be made by April 2020.

EPA held a "Kickoff Workshop" at Research Triangle Park, NC, in March to debate the merits and challenges of a joint NOx-SOx NAAQS. Secondary NAAQS are designed to protect the environment, while primary standards are intended to protect human health. The agency in 2012 shelved plans to issue a joint standard at that time, citing data uncertainties, and said it would continue to research the issue -- leading to the new workshop.

Environmentalists in Center for Biological Diversity (CBD) v. EPA sued the agency in federal appeals court challenging the April 3, 2012, final rule that dropped an earlier draft proposal to set a first-time combined NOx and SOx secondary standard. EPA in that rule said scientific uncertainties prevented it launching the joint standard, which would have employed a new method called the Aquatic Acidification Index (AAI).

The U.S. Court of Appeals for the District of Columbia Circuit in a May 27, 2014, ruling acknowledged the data gaps and EPA's plans to pursue a pilot air research study to inform a potential future NOx-SOx standard, and ruled in favor of the agency against forcing issuance of the NAAQS. CBD faulted the decision and urged the three-judge panel that heard the case to rehear it, but the court denied that request in a Dec. 4 order.

The end of the litigation shifts focus to the agency's IRP and its upcoming review for a potential joint NOx-SOx NAAQS, but some scientists at March's workshop warned such a limit could be hard to implement.

EPA will take comment on the draft IRP through Dec. 30.

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News Headline: LANDFILL RULE TESTS THRESHOLD QUESTION OVER EPA POWER TO UPDATE ESPSS |

Outlet Full Name: Inside EPA
News Text: Power plant operators and environmentalists are at odds over whether EPA has threshold legal authority under section 111(d) of the Clean Air Act to update its standards for methane and other emissions at existing municipal landfills, a precedent-setting dispute that could also determine whether the agency will eventually be able to update its existing power plant greenhouse gas standards.

In recent comments on the proposed landfill rule update, the Utility Air Regulatory Group (UARG) charges that "the Agency lacks authority under the [Clean Air Act] to revise the emission guidelines to make them more stringent."

The group says that while Congress provided explicit authority for EPA to strengthen standards for new sources under section 111(b), lawmakers failed to provide similar authority for existing source standards under section 111(d).

As a result, the group says EPA should not assume discretion to update the standards and should "withdraw" its proposed revision. "The absence of a statutory grant of authority in section 111(d) does not create a discretionary ability to seize authority that a statutory grant, such as the one in section 111(b), would give," UARG says. Relevant documents are available on InsideEPA.com. (Doc. ID: 186319)

But environmental groups are strongly defending EPA's right to update and strengthen existing source standards, citing the "plain language" of the Clean Air Act.

"[T]he plain language of 111(d), the legislative history, and bedrock administrative law principles manifestly support EPA's ability to periodically review and revise 111(d) standards -- just as EPA is required to do for new sources under section 111(b)," the Environmental Defense Fund (EDF) writes in its Oct. 26 comments.

The dispute over whether EPA has authority to update standards under 111(d) adds to legal complications that have emerged over the agency's power plant rules, where critics of the rules charge that the agency is barred from regulating power plants under that section because it is already regulating the sector's air toxics emissions under section 112.

While EPA and its supporters have opposed the arguments, the issue is complicated because House and Senate amendments to section 111(d) were never reconciled in conference before the 1990 air act amendments were enacted.

The Senate amendment would explicitly allow EPA's proposed rule by limiting section 111(d)'s "112 exclusion" to pollutants already regulated under that section. The House amendment could be read as prohibiting the rule because it focuses on source categories, not pollutants.

EPA is revising the existing landfill emission guidelines, which were last set in 2000,

alongside updated standards for new and modified landfills, which were last set in 1996. The agency is developing the rules in response to a 2011 EDF petition that asked EPA to update standards for new and modified sources (Inside EPA, Aug. 21).

The subsequent 2012 settlement established a May 2013 deadline for EPA to publish a proposed new source performance standards (NSPS) rule and a May 2014 deadline for the agency to finalize a rule. The latter deadline has been extended four times, most recently to July 14, 2016, in an Aug. 20 filing.

EDF did not petition, however, for an update to EPA's emissions guidelines for existing landfills, though the simultaneous proposals suggest that EPA is on track to finalize rules for both new and modified and existing landfills at the same time, much as it did for the package of power plant rules.

Both the proposed emissions guidelines and the supplement to the NSPS would set an emissions threshold of 34 metric tons of methane, a level at which landfills would be required to begin capturing emissions of landfill gas, which contains methane and other pollutants. The figure is significantly lower than the 40-ton threshold that EPA floated in its 2014 proposed NSPS and the 50-ton current threshold.

Such requirements are needed because landfills account for 18 percent of total U.S. methane emissions, making them the third largest domestic source of human-related GHG emissions, according to the White House.

Despite the proposed rule's stricter emissions threshold, waste industry groups are generally supportive, largely due to a change that would allow site owners to use monitoring results, rather than modeling data, to determine their emissions.

But whether EPA has authority to update the existing source standard is complicated because the Clean Air Act does not provide the agency with explicit authority to revise standards for existing sources under section 111(d), nor does it explicitly prohibit the agency from updating them.

By contrast, section 111(b) of the air act does specifically direct EPA to update standards for new sources, requiring that the EPA administrator "shall, at least every 8 years, review and, if appropriate, revise such standards. . ."

Prior to the 1990 amendments, EPA had only issued four rules under 111(d), governing fluoride emissions from phosphate fertilizer plants, sulfuric acid mist from sulfuric acid production units, total reduced sulfur emissions from kraft pulp mills and fluoride emissions from primary aluminum plants.

Since the 1990 amendments, EPA has issued two 111(d) rules, governing municipal landfills and power plants.

But until it proposed to update the landfill rules, the agency had never tested its

power to do so.

EPA's own legal explanation of its authority is limited. In its proposed emission guidelines for existing landfills, EPA notes that it "is not statutorily obligated to conduct a review of the Emission Guidelines, but has the discretionary authority to do so when circumstances indicate that it is appropriate."

But one industry lawyer says that the agency only gets "discretion within the bounds of the authority," adding that statute includes no authority for EPA to revise the existing source standards.

The source also notes that the agency has never before attempted to revise standards under section 111(d), providing "further credence to the fact that there is no authority" for the agency to do so.

UARG, which represents power sector interests, is likely using the landfill proposal as a legal test for the future of EPA's recently finalized existing source performance standards (ESPS) for power plants, which call for a 32 percent reduction nationwide in carbon emissions from existing plants by 2030.

EPA also promulgated a companion new source rule for power plants under section 111(b), but the issue of whether EPA could update standards for existing sources under section 111(d) would bolster the agency's ability to ratchet up targets for existing power plants after 2030, when the current compliance period ends.

The industry lawyer says it is still too early to tell whether parties will litigate over this issue following the promulgation of final emission guidelines for landfills, but suggested that some power interests could sue because they have a physical connection to landfills. "A lot of power plants are located next to landfills" and capture the methane gas they emit, the source says, noting that "there is a nexus" between the two source categories, something that could give them standing to sue over the rules.

Nonetheless, by floating the question of whether EPA would be able to revise standards promulgated under section 111(d), UARG is already prepping to fight against potentially more stringent ESPS targets post-2030.

"If the [ESPS] survives and the interpretation of 111(d) in [UARG's] comments is correct, you hit 2030 and [power plants] have to maintain that level" of emissions reductions, the industry lawyer says, meaning that EPA would be unable to strengthen the ESPS goals.

The power sector group argues that if Congress had intended for EPA to have the ability to revise standards for existing sources under section 111(d), it would have provided that authority. Quoting from the 1993 case Keene Corp. v. United States, UARG notes the Supreme Court has held that: "'[W]here Congress includes

particular language in one section of a statute but omits it in another . . ., it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'"

UARG also argues that it makes sense from a policy perspective for EPA to only have the authority to revise its new source standards. "Emission guidelines under section 111(d) are authorized only under very limited circumstances to ensure that existing sources that are not covered by other provisions of the [Clean Air Act] . . . do not go uncontrolled," UARG's comments read.

As the industry lawyer notes, everything built after the date a 111(b) standard is promulgated is regulated by the new source standard, and thus it makes sense for EPA to have the authority to revise those standards. Then, when you set a 111(b) standard, "you reach back in time and get the existing units into a 111(d) standard," the source says, adding that there is then "no longer this issue of an unregulated source."

EDF, however, argues that the "plain language" of section 111(d), as well as courts' interpretation and the legislative history of section 111, provides EPA with the authority to periodically revise its existing source standards, as such an ability is crucial to ensuring the standards of performance reflect the best system of emission reduction (BSER).

An interpretation that prohibited the revision of standards would be "contrary to the statute and subvert the intent of this forward-looking program," EDF writes. "Rather than remain vibrant over time, as Congress intended, section 111(d) emission guidelines would stagnate and be forever based on industry characteristics and known systems of emission reduction at a single snapshot in time."

In addition, EDF argues that continuous improvement of standards is "a core element of" the Clean Air Act, and thus revision of standards is part of EPA's "broader duties under the [Clean Air Act] 'to protect and enhance' air quality."

EDF also notes in its comments that administrative law supports "agency authority to review and amend previously-issued regulations, and the absence of any indication in the statute to the contrary, it is reasonable for EPA to interpret section 111(d) to allow review and revision of Section 111(d) standards."

Even if, following these arguments, there was still some ambiguity, EDF notes that "EPA's interpretation of its clean air authorities is clearly reasonable and should be entitled to substantial deference by a reviewing court." -- Abby Smith

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News Headline: EPA'S REVISED BOILER MACT EXPANDS 'CLEAN FUEL'

COMPLIANCE TO BIOMASS |

Outlet Full Name: Inside EPA
News Text: EPA's final revised maximum achievable control technology (MACT) air toxics rule for "major" source boilers expands the definition of "clean fuels" approved as a compliance option to cut emissions during boiler startups to include certain types of biomass, pleasing industry groups although EPA retained other provisions that they oppose.

The reconsidered boiler MACT -- which was announced last month and published on EPA's website Nov. 5 -- largely adopts alternative compliance provisions for startup and shutdown periods outlined in the earlier proposed version of the revised rule. EPA is offering the alternatives, such as use of clean fuels, because traditional emissions control devices do not function efficiently when boilers are either starting up or shutting down. Relevant documents are available on InsideEPA.com. (Doc. ID: 186317)

The rule confirms the proposal's language that operators of major source boilers -- those emitting 10 tons per year (tpy) or more of one hazardous air pollutant (HAP) or 25 tpy of a combination of HAPs -- will be able to use "work practices" during startup in lieu of compliance with numeric MACT pollution limits.

Part of the work practice requirement is that boiler operators use clean fuels to minimize pollution. EPA in the rule expands the list of approved clean fuels to include certain gases and also "clean dry biomass."

This approach pleases forest industry groups. In an Oct. 30 statement anticipating the rule's signature, American Wood Council (AWC) President and CEO Robert Glowinski said, "With just three short months before the compliance deadline, AWC is pleased that this critical piece of the rulemaking is completed. Wood product manufacturers produce almost 80 percent of their own energy through the use of carbon neutral biomass residuals, and this reconsideration will allow mills to avoid costly retrofits required to burn alternative fuels."

Separately, the American Forest and Paper Association in an Oct. 30 statement said, "With the compliance deadline of January 2016 looming, we're pleased that the final Boiler MACT reconsideration rule has been completed and addresses many of the issues we asked EPA to reconsider, particularly around how to safely and quickly start-up and shutdown our boilers while preventing damage to control equipment."

Boiler operators will be required to engage particulate matter pollution controls within one hour of starting to burn "non-clean fuels" such as coal, and all pollution controls within four hours of the start of supplying "useful thermal energy," the same formulation as in EPA's proposed reconsidered rule.

EPA is retaining from the proposal a carbon monoxide (CO) limit from its prior

MACT rule set at 130 parts per million (ppm), despite industry concerns over the correct level of such limits and environmentalists' doubts about use of CO as a "surrogate" for other pollutants, such as polyclic aromatic hydrocarbons.

The final rule further retains the proposal's continuous "parameter" monitoring requirements, with minor changes. Environmentalists generally prefer actual continuous emissions monitoring to "parametric" monitoring that checks monitor performance rather than direct readings of pollution.

Meanwhile, the U.S. Court of Appeals for the District of Columbia Circuit is poised to hear oral argument Dec. 3 in pending litigation over other aspects of the major boiler MACT, as well as related challenges to a boiler air toxics rule for smaller "area" source boilers and an emissions rule for solid waste incinerators.

The three-judge panel hearing United States Sugar Corp. v. EPA and the related cases consists of three Republican nominees, Karen LeCraft Henderson, Janice Rogers Brown and Thomas Griffith. Litigation over the MACT standards has been delayed for years by EPA's reconsideration of the rules.

The litigation is wide-ranging, covering such topics as how EPA sets its MACT "floors," or maximum emissions limits, with environmentalists claiming the floors are too weak, and industry that they are too stringent.

One issue likely to arise is EPA's use of the Upper Prediction Limit, a statistical tool common to several EPA air toxics rules -- including the agency's flagship air toxics rule for power plants currently on remand to the D.C. Circuit -- that environmentalists say allows EPA to set MACT floors at less stringent levels than the law requires (Inside EPA, Nov. 6).

Environmentalists unhappy with the panel selection have filed a Nov. 6 motion for the court to "correct" its choice, in the light of what they claim is a commitment by the court to assign the same panel that earlier heard a related case on EPA's rule defining "non-hazardous secondary materials." The rule determines what materials may be burned as "fuel" under the MACT rules, or as "waste" under the stricter incinerator standards.

In Eco Services Operations LLC v. EPA, the court June 3 rejected challenges by both industry and environmentalists, allowing EPA's rule to stand. The panel that heard the suit consisted of Judges David Tatel and Robert Wilkins, both Democratic appointees, and David Sentelle, a Republican appointee. However, environmentalists claim that a Feb. 26 court order requires that the same panel hear the three cases scheduled for Dec. 3 arguments.

This followed an earlier court order that required all four cases be heard by the same panel, environmentalists say in their motion. They say, "briefing in all four cases then proceeded on a coordinated basis, with the understanding that all four sets of

briefs would be read and considered by the same panel of three judges." -- Stuart Parker

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News Headline: ADVOCATES HOPE EPA DATA REQUEST WILL SPUR OIL & GAS AIR RULE REVISIONS |

Outlet Full Name: Inside EPA
News Text: Environmentalists hope EPA's recent request for information on hazardous air pollutant (HAP) emissions from the oil and natural gas sector is an early indication that the agency will revise its 2012 air toxics rule for the sector as well as a review of the residual risks to humans from the sector's emissions that environmentalists have criticized.

In a pre-publication notice released Nov. 4 ahead of its upcoming publication in the Federal Register, EPA asks for data not available at the time it crafted the 2012 national emissions standards for hazardous air pollutants (NESHAP) for the oil and gas production industry, as well as the natural gas transmission and storage sectors.

Specifically, the agency asks for groups to submit data within a 60-day comment period on emissions of benzene, toluene, ethylbenzene and xylene (BTEX) from storage vessels without potential flash emissions (PFE) and information on controls for BTEX emissions, and data on a potential compliance issue related to regulated small glycol dehydrators. The Register notice is available on InsideEPA.com. (Doc. ID: 186478)

The agency says that it is requesting information on all HAPs from storage vessels without PFE and on HAPs other than BTEX from small glycol dehydrators, along with seeking information regarding compliance demonstration issues with its 2012 requirements for curbing BTEX from small glycol dehydrators.

EPA in the notice does not say how it will use the information, but environmentalists are suggesting the data could help form the basis for revising and tightening the 2012 air toxics rule.

The NESHAP -- parts of which are the subject of pending litigation in the U.S. Court of Appeals for the District of Columbia Circuit -- set maximum achievable control technology (MACT) air toxics requirements for BTEX compounds for several sources in the production, transmission and storage sectors. But while EPA proposed extending them to storage vessels without PFE, the agency did not finalize that proposal.

At the time of issuing the final rule, EPA said "we need (and intend to gather) additional data on these sources in order to analyze and establish MACT emission

standards for this subcategory of storage vessels."

In the new Register notice, the agency says it is interested in data characterizing emissions and emission rates of storage vessels in production sector that do not have PFE but that "nonetheless emit HAP."

One environmentalist says, "It's positive to see EPA admit it doesn't have enough information to adequately regulate air toxics," and says the agency will hopefully use the additional information it collects as a result of the request to begin filling some of what advocates believe are the "substantial gaps" in the 2012 rules.

"An onslaught of ambient air studies have repeatedly reported finding HAPs at levels of concern" from the sector, both those covered by the NEHSAP rule and those that the rule does not regulate, the source adds.

The advocate says EPA needs to address ambient monitoring data showing BTEX compounds at levels of concern in the vicinity of equipment at well sites, data indicating there are HAPs not covered under the NESHAP emitting from oil and gas sources, and industry equipment not captured by the 2012 emissions rule.

Environmentalists also claim EPA's "residual risk" review of the risk to human health from oil and gas sector air toxics is inadequate to protect health and unlawful under the Clean Air Act.

They say the agency improperly relied on outdated emissions inventory estimates from 2005, which contained values for only roughly 25 percent of the sources subject to the rule. They say this leaves several air toxics, including benzene, n-hexane, formaldehyde, naphthalene and others, either insufficiently regulated or unregulated. But the new data request could give the agency fresh information to revise that review.

The 2012 NESHAP updated EPA's 1999 air toxics limits for oil and gas production, transmission and storage operations. EPA issued the final revised rule in 2012, alongside updated new source performance standards for the sector, which set controls for volatile organic compounds and sulfur dioxide emissions.

The rule is part of a package of regulations EPA issued for the oil and gas sector, and the residual risk review satisfied an air law mandate for the agency to review air rules eight years after their issuance.

In an Oct. 15, 2012 petition for reconsideration of the NESHAP, a host of groups including the Center for Biological Diversity and Natural Resources Defense Council said EPA's estimates do not account for a majority of HAPs from the sector and that the agency must provide a formal rationale for its reliance on the 2005 estimates over actual data.

The groups also argued that new studies became available after the final rule indicating that the risk estimates underpinning the rule significantly underestimate risk, including a February 2012 Journal of Geophysical Atmospheres study titled, "Hydrocarbon Emissions Characterization in the Colorado Front Range -- A Pilot Study," and others.

"In light of the findings of these studies, a more careful assessment of emissions and health risk are needed, to address the need for a stronger rule to protect public health," the petition said.

In the petition, the advocates referenced some of the issues EPA appears to be collecting data on in the Register notice. The petition urged the agency to set MACT requirements for storage vessels without the PFE, saying the final rule unlawfully delayed" the controls "due to a professed lack of necessary data."

For small glycol dehydrators, the agency should strengthen the limit on BTEX emissions by setting a standard that "actually follows the Section 112(d)(3) (A) requirement to base the floor on the emission reductions achieved by the best performers on average." Additionally, EPA should set a limit on all other HAPs which small glycol dehydrators emit, in addition to BTEX, according to the advocates' petition for reconsideration.

The D.C Circuit in a Sept. 24 order agreed to extend an existing stay holding in abeyance litigation over the NESHAP rule through Jan. 12, 2016, in American Petroleum Institute, et al., v. EPA, a suit that consolidated petitions for reconsideration from the environmental groups and from industry.

EPA said previously in the suit that it is in the process of developing the proposed reconsideration rule that addresses the issues for which it intends to grant reconsideration, but it needs additional time to complete the proposal. "EPA has determined that additional information is necessary to enable EPA to evaluate or address some of the issues raised in the reconsideration petitions," the agency said in a Sept. 16 motion to extend the stay.

The agency has not given details about which specific provisions it may include in the reconsideration rulemaking. But a second environmentalist says EPA has several legal options for addressing the gaps in the 2012 air rules, which may not require the agency to launch a totally new residual risk review -- which would be more time consuming -- including under general Clean Air Act section 112 air toxics rulemaking authority.

But that source adds that EPA should conduct a new risk assessment of air toxics at some point to get a complete picture of the "full suite" of impacts for those living near oil and gas sites. -- Bridget DiCosmo

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News Headline: JUDGES QUESTION 'NATIONAL APPLICABILITY' OF EPA NON-ROAD AIR RULE WAIVER |

Outlet Full Name: Inside EPA
News Text: Appellate judges at Nov. 9 oral argument suggested EPA erred in granting California a Clean Air Act waiver to issue non-road engine air rules stricter than federal requirements, saying the agency might have misread the law by basing its approval on the rules being "nationally applicable" rather than having "nationwide scope or effect."

If the three-judge panel that heard the argument finds that EPA erred by using "nationally applicable" for the test in the engine air rule waiver, it could raise questions over other waivers that have used the same test.

The difference between the two tests is central to determining whether the D.C. Circuit will resolve a suit, Dalton Trucking, et al. v. EPA et al., in which the trucking industry is challenging EPA's approval of a waiver that allowed California to pursue the non-road diesel equipment emissions standards. If the court determines that the state rules do not have nationwide scope or effect then it might send the case to the 9th Circuit, which includes California.

California has unique authority under the air law to set its own emissions standards for cars and trucks distinct from federal requirements, and also for off-road equipment commonly used in the construction sector. EPA must review and grant waivers for such rules to take effect, and if it does, other states can adopt California's standards.

The standards at issue in Dalton differ from car tailpipe standards as they regulate the use of engines, rather than their design. The standards require labeling and reporting of non-road equipment, restrictions on idling and also fleet-wide nitrogen oxides limits for equipment. Construction industry groups have for years disputed California's right to craft such in-use standards and for EPA to approve them, but without success in prior D.C Circuit suits.

In the suit, critics of the standards want the appellate court to vacate EPA's issuance of the waiver, claiming the state lacks the authority for such rules because the approval was flawed and the rules cannot be replicated elsewhere.

EPA and California, however, have defended the waiver approval, with the Department of Justice on the agency's behalf saying that EPA's interpretation of the air law in its decision "is consistent with the statutory language, congressional intent as demonstrated by the legislative history, and prior decisions by this Court" (Inside EPA, May 15)

But Judges Merrick Garland, David Sentelle and Harry Edwards at the argument

raised questions over EPA's use of the "nationally applicable" test for the waivers rather than "nationwide scope or effect."

The judges all appeared to agree that EPA erred by not issuing an explicit finding that the California rules were "of nationwide scope or effect" -- the statutory definition of a rule that normally confers jurisdiction on the D.C. Circuit to hear challenges to such rules. EPA in its waiver rule contested in Dalton merely stated that the non-road diesel engine standards had "national applicability."

Industry in its Feb. 13 opening brief argued that, "Because the Nonroad Engine Rules apply only to equipment operated in California, they are of regional or local applicability and not of national applicability," and the 9th Circuit should hear the suit.

But EPA in a May 12 reply brief said the waiver decision is a "nationally applicable" final action because other states may automatically adopt California's standards without further EPA review. The agency also argued that the cout has "consistently" treated EPA decisions to authorize California non-road vehicle emissions rules as "nationally significant" final action.

Arguing for EPA, Department of Justice (DOJ) attorney Joshua Levin said that a rule with "national applicability" is the same in this context as one with "nationwide scope or effect," and that EPA in its waiver rule followed the same practice it has on prior occasions in granting mobile source waivers to the state.

Levin said there are "some vagaries" over the use of the two terms, and that for the purposes of California vehicle rule waivers, EPA has considered them interchangeable.

The judges sharply disagreed, with Garland and Sentelle pressing Levin on the timing of such applicability, asserting that the rules have only regional applicability before, possibly, being adopted by other states.

Garland noted that only some 15 states currently use California's on-road vehicle standards rather than weaker federal pollution regulations -- far from a majority of states.

Edwards asked Levin where was EPA's finding of nationwide scope or effect. Levin conceded that that those were not the words the agency used, using "national applicability" instead.

"Old habits die hard," Levin said admitting that although EPA has used this formulation before, litigants have not directly challenged it in prior waiver approval suits. Levin said the court appeared inclined toward "literalism."

Sentelle retorted that "it is what we call following the law."

"The language is wrong, the intent is clear," Levin said.

But if the court finds that the waiver approval is not a rule with nationwide scope or effect that must be heard in the D.C. Circuit, it could send the case to the 9th Circuit which hears challenges over EPA rules affecting California. When DOJ's Levin suggested that for the D.C. Circuit to pass the case back to the 9th Circuit would be "unprecedented," Sentelle said it would be "not remotely" unprecedented.

Levin suggested to the court that the remedy should be to allow EPA to explain itself, but Sentelle was unconvinced.

Edwards told Levin "I'm not really trying to shoot you down," but in light of EPA's failure to point toward a clear statement of nationwide scope or effect, "you have a serious problem here."

Garland, meanwhile, demanded to know why EPA did not address the problem by issuing such a finding before the case reached oral argument in the D.C. Circuit.

"I dare say EPA gets the message that this court is delivering," Levin said.

Attorney Ross Hirsch, representing the California Air Resources Board (CARB), which is intervening on EPA's behalf in the case, backed EPA's position. "This is the correct venue" for California waiver decisions, he said.

Hirsch also rejected industry arguments in the case that there was no "compelling and extraordinary need" for the California non-road standards as required by the air act.

Industry litigants have suggested that California's non-road engine standards were crafted purely to meet the needs of two regions in the state with acute air quality problems: the Los Angeles area and the San Joaquin Valley.

Speaking for a coalition of trucking, oil and construction companies, attorney Theodore Hadzi Antich made the case at argument that the Dalton litigation should be transferred to the 9th Circuit. He also attacked EPA's interpretation of its authority to issue waivers for the CARB air quality program as a whole.

Garland pushed back strongly on this assertion, noting Congress' use of the term "in the aggregate" to qualify EPA's waiver authority. The air laws states, "[T]he Administrator shall, after notice and opportunity for public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards."

Hadzi Antich said that use of "standards," in the plural, denotes the packages of individual air pollution limits that are often approved together in one waiver application.

Garland argued that if there is any ambiguity on the issue, industry must still overcome the traditional deference on interpretation of ambiguous statutory terms granted by courts to federal agencies under the Chevron doctrine.

Hadzi Antich said that that such deference cannot apply where EPA's action is contrary to the intent of Congress. He cited legislative history -- but not specifics -- to suggest that Congress intended that the waiver authority does not apply to the whole CARB program.

Sentelle suggested if the court thinks a term is ambiguous, then it is up to EPA to decide how much weight to give legislative history.

Hadzi Antich countered that under recent Supreme Court precedent in the June 25 ruling in the health care case King v. Burwell, EPA does not enjoy Chevron deference where its actions are contrary to the intentions of Congress.

Garland was unconvinced, asking where the evidence is for such legislative history that would prove Congressional intent. "We need awfully clear legislative history," he said.

Legal sources have said that the Burwell precedent, which uses what is referred to as Chevron "step zero" analysis, is likely to be raised as a test for deference to the agency in many future environmental cases.

Under Burwell, the high court decided it would not defer to agency interpretation of an ambiguous statute where it is questionable whether Congress properly delegated statutory authority to the agency in the first place. Normally, Chevron requires a two-step analysis, asking first if the statute is silent or ambiguous on a particular issue, and second, whether a federal agency has adopted a "permissible construction" of the statute.

CARB, in briefing in the case, warned that should the court side with industry on whether EPA waiver authority extends to the whole California program, it would "compel EPA or ultimately this Court to oversee and reevaluate each of California's specific emission standards and policy judgments behind each specific emission standard."

This would contradict the Clean Air Act and "explicit Congressional intent to provide California broad discretion to pioneer innovations that will lead the nation in air quality regulation," CARB said. -- Stuart Parker

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News Headline: 6TH CIRCUIT REINFORCES CITIZENS' ABILITY TO PURSUE EMISSIONS 'NUISANCE' SUITS |

Outlet Full Name: Inside EPA
News Text: The U.S. Court of Appeals for the 6th Circuit in two recent rulings has reinforced citizens' ability to pursue state public nuisance lawsuits against industrial sources of air pollution, building on an earlier landmark ruling from the 3rd Circuit and avoiding a circuit split that critics of the suits could have used to seek Supreme Court review.

A three-judge panel in a unanimous ruling issued Nov. 2 in Bruce Merrick et al. v. Diageo Americas Supply, Inc., rejected arguments by alcoholic drinks maker Diageo that the federal Clean Air Act preempts tort claims brought by citizens under state common laws of public nuisance against companies holding valid air law permits. Relevant documents are available on InsideEPA.com. (Doc. ID: 186482)

The company is accused by local Kentucky residents of causing property damage through "fugitive," or uncontrolled, ethanol emissions from whiskey aging facilities, and the appeals court decision upholds an earlier federal district court ruling in favor of the residents' nuisance claims.

The ruling in Merrick also serves as the basis for the same 6th Circuit panel's rejection, also issued Nov. 2, of similar industry preemption arguments in Little, et al. v. Louisville Gas & Electric Co., et al. In that case, residents are claiming property damage over emissions from a local power plant.

6th Circuit Judges Eugene Siler, John Rogers and Jane Stranch's rulings preserve citizens' rights to bring public nuisance claims, echoing the 2013 finding by the 3rd Circuit in Kristie Bell, et al. v. Cheswick Generating Station that is seen as a landmark backing of state air nuisance claims.

In the Kristie Bell case, the court also upheld the rights of local residents to bring claims under the state common law of public nuisance, in a dispute over ash from a power plant that fell on houses near the Cheswick power plant, owned by GenOn Power Midwest, L.P., near Pittsburgh.

Writing the opinion for the 6th Circuit in Merrick, Rogers references Kristie Bell and concludes that the federal air law does not -- as industry claims -- preempt state air nuisance suits.

"The states' rights savings clause of the Clean Air Act expressly preserves the state common law standards on which plaintiffs sue. The clause saves from preemption 'the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution,' except that the 'State or political

subdivision may not adopt or enforce any emission standard or limitation' that is 'less stringent' than a standard or limitation under an applicable implementation plan or specified federal statute," according to Rogers' ruling.

Rogers rejects Diageo's argument that the pollution controls at issue must be a limit established through state regulation, arguing that state courts' orders to the company also count.

"State courts are arms of the 'State,' and the common law standards they adopt are 'requirement[s] respecting control or abatement of air pollution,'" he writes. "Thus, the states' rights savings clause makes clear that states retain the right to 'adopt or enforce' common law standards that apply to emissions."

Rogers says that the Clean Air Act savings clause is "materially indistinguishable" from that in the Clean Water Act, which the courts have held to include state courts as a branch of "states" for the purposes of the statutory language, citing, among other cases, the 3rd Circuit's decision in Bell.

He further finds a difference between claims of the air law "displacing" certain nuisance claims under federal common law, and the "preemption" that Diageo claims exists with respect to state common law.

"Diageo argues that the Supreme Court's reasons for concluding that the Clean Air Act displaces federal common law all militate with equal force in favor of holding that the Act preempts state common law. There are fundamental differences, however, between displacement of federal common law by the Act and preemption of state common law by the Act. For one thing, the Clean Air Act expressly reserves for the states -- including state courts -- the right to prescribe requirements more stringent than those set under the Clean Air Act. The Act does not grant federal courts any similar authority," Rogers writes.

The Supreme Court found that the air law displaced nuisance claims under federal common law in rejecting Connecticut's effort to curb greenhouse gas emissions from an electric utility in American Electric Power v. Connecticut, but the 3rd and 6th Circuit have now found the precedent does not cover state law.

In his opinion in Little, Rogers writes that, "Defendants' Clean Air Act preemption arguments are disposed of by our decision in Merrick v. Diageo Americas Supply." Further, "Plaintiffs' state common law claims are not materially distinguishable from the state common law claims raised in Merrick."

The court's rulings fail to establish the clear split among appeals courts that industry opponents have hoped for, in order to support an eventual appeal for the Supreme Court to decide the issue. One industry legal source says, "If one court says it, that's one thing, but when another court says the same thing, you have to take it more seriously. . . . the [6th Circuit] court was more careful in the discussion and more

persuasive."

The source says that the "plain text" argument against air law preemption of state law nuisance claims is so strong that even conservative justices at the high court would not likely depart from it. "I can definitely see [Justice Antonin] Scalia saying 'this is what the law says, and that's that.' It would take an activist court to find preemption here." -- Stuart Parker

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News Headline: CRITICS OF EPA 'CONSISTENCY' AIR POLICY OUTLINE POTENTIAL LEGAL CHALLENGE |

Outlet Full Name: Inside EPA
News Text: Critics of EPA's proposal to revise its Clean Air Act "regional consistency" policy and exclude adverse court rulings from its uniform application of agency air requirements are outlining a potential legal challenge to the plan, warning it violates an air law provision that mandates national uniformity for air permitting and other mandates.

The agency's plan is "inconsistent with the authority granted to EPA" in section 301(a) of the Clean Air Act, in which Congress required EPA to issue regulations that would ensure consistency in its national policies and to resolve inconsistencies between agency regions, argue the American Petroleum Institute (API) and Interstate Natural Gas Association of America (INGAA) in joint Nov. 2 comments on the agency's proposed consistency policy update.

The groups urge that the proposal "be withdrawn in full," saying the proposed revisions "unequivocally violate the plain language" of the Clean Air Act and exceed EPA's authority under the air law.

EPA took comment through an extended Nov. 3 deadline on its Aug. 5 proposed rule that would allow EPA to exclude adverse appellate court rulings on its Clean Air Act policies from applying nationwide, which could mean different agency regional offices imposing differing requirements on industries.

Early comments on the proposal filed by energy, chemical and other industry groups raised general concerns that the policy update could lead to legal and regulatory confusion for the sectors (Inside EPA, Oct. 23).

The new API-INGAA comments hint at a potential legal challenge if EPA finalizes the proposal by warning that the consistency policy update would be at odds with the section 301(a) mandate for uniform air policies. "By broadly condoning inconsistency, EPA's proposed revisions would do the opposite," the organizations argue. Relevant documents are available on InsideEPA.com. (Doc. ID: 186475)

The agency's proposal responds to a U.S. Court of Appeals for the District of Columbia Circuit decision in May 2014 in National Environmental Development Association's Clean Air Project (NEDA/CAP) v. EPA, which vacated an EPA memo that sought to narrow the reach of an adverse 6th Circuit air permitting ruling to only the states in that circuit. The D.C. Circuit said the memo was at odds with the regional consistency policy as it could have led to differing permit requirements among all 50 states -- prompting EPA to now seek exemptions to the policy.

Under the proposed rule, the agency would not apply rulings by other circuit courts on locally or regionally applicable regulations to states in other appellate circuits, even though this may result in inconsistent policy application and uneven application of the air law. This could affect a wide range of air policies including agency regional offices' approvals of state implementation plans for complying with air standards, or permitting decisions.

But groups representing various industry sectors argue in their comments on the proposal that the NEDA/CAP ruling did not necessitate the proposed rule, given that EPA has been enforcing the regional consistency regulations that were promulgated under section 301 without issue for decades. They urge the agency to withdraw the proposed rule, saying it will create massive uncertainty and uneven enforcement of air permitting.

The Air Permitting Forum, which represents Fortune 100 companies dedicated to the implementation of Clean Air Act permitting and regulatory programs, says in Nov. 3 comments that the NEDA/CAP ruling is a single court decision and "does not highlight a pressing need to overhaul such longstanding and undisturbed regulations."

The comments add, "What is more, the form of EPA's proposal, which would allow EPA to apply intercircuit nonacquiescence at its discretion, enhances this concern, because it invites the very inconsistency that Section 301(a)(2) was designed to prevent." Section 301(a)(2) of the Clean Air Act requires the agency to promulgate rules establishing "general applicable procedures and policies for regional officers and employees . . ." to "assure the fairness and uniformity in the criteria, procedures and policies," applied by the regions and should provide a "mechanism for identifying and standardizing inconsistent or varying" policies or criteria.

The Air Permitting Forum argues that while the general doctrine of intercircuit nonacquiesence may be a relevant consideration in absence of a specific statutory mandate, "that situation does not exist here" because section 301(a)(2) precludes nonacquiesence.

The group also warns that a provision in the proposal which says "EPA regional offices' employees would not need to seek headquarters office concurrence to act inconsistently with national policy or interpretation if such action is required by a

federal court decision arising from challenges to 'locally or regionally applicable' actions" is unlawful.

"It would be arbitrary and irrational for the Administrator to delegate authority to regional administrators in an inconsistent fashion," according to the Air Permitting Forum.

The Edison Electric Institute (EEI), representing shareholder-owned electric companies, also raises concerns about the proposed policy update in its Oct. 19 comments.

EEI says that a "single decision by a federal court lacking jurisdiction to review and invalidate a nationwide rule should not give rise to a scenario under which EPA regions that are not subject" to that court's authority are "deciding for themselves" whether to follow the court ruling or the nationwide policy.

A better approach, EEI suggests, would be to require all other regions to continue following the national policy unless EPA headquarters changes the national policy through an "appropriate mechanism" such as a formal rulemaking.

A collection of major industry groups, including American Chemistry Council, U.S. Chamber of Commerce, Gas Processors Association, American Farm Bureau Federation and others, say in Nov. 3 comments that the proposed rule is unnecessary and if the agency does finalize the proposal, it should establish a consistent approach for expanding the scope of locally or regionally applicable actions.

"Thus, to promote transparency and avoid any confusion or uncertainty, the Associations urge EPA to clarify in any final rule that it will only apply such decisions on a national scale after identifying the criteria upon which EPA is proposing such decision and after completing notice and comment rulemaking for each judicial decision that EPA intends to apply nationally," those comments say. -- Bridget DiCosmo

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News Headline: EPA SEEKS TO BOOST OIL, GAS INDUSTRY FLEXIBILITY IN VOLUNTARY METHANE PLAN |

Outlet Full Name: Inside EPA
News Text: EPA appears to be trying to enhance flexibility for oil and natural gas production companies that might take part in the agency's revised plan for the sector to voluntarily reduce its emissions of the greenhouse gas (GHG) methane, by ensuring the plan will not duplicate pending methane rules for the sector or GHG reporting requirements.

The agency "aims to minimize the reporting burden to allow partner companies to focus time and resources on implementation of methane-reducing activities," according to an Oct. 19 technical support document for the Natural Gas STAR Methane Challenge Program that was recently added to EPA's website. The program is a "new mechanism" for oil and gas companies to "make and track ambitious commitments to reduce methane emissions.

Because EPA already collects oil and gas GHG data under subpart W of the agency's reporting program for many facilities, the agency intends to rely on that data the extent possible rather than collect new data, the document says. The document is available on InsideEPA.com. (Doc. ID: 186480)

EPA is proposing to collect some information from partner companies through annual reporting, to "provide context for participation in the program and facilitate annual tracking of progress," including a list of facilities included in the voluntary plan that report to subpart W, a list of included facilities that do not, any applicable air regulations that apply to those facilities, and a list of facilities acquired or divested during the reporting year.

EPA also says that it is seeking to ensure alignment with its forthcoming package of air rules for the sector. Those include its proposed first-time new source performance standards (NSPS) for regulating methane and control techniques guidelines for curbing ozone from existing oil and gas operations in areas not attaining EPA's ozone ambient air limit.

"For equipment leaks/fugitive emissions and pneumatic pumps, EPA recognizes the potential overlap for coverage of this emissions source with on-going regulatory actions, including the proposed updates to NSPS and draft Control Techniques Guidelines," EPA says. "Methane Challenge intends to specify mitigation options that are consistent with regulatory approaches, with greater flexibility included in the voluntary Program as needed. Therefore, as a result of regulatory developments in process, a proposal for this commitment option will be phased-in at a later date."

The agency also released Nov. 10 a "Partnership Agreement" outlining the responsibilities for participating companies and for EPA under the new program. For example, EPA's responsibilities include assisting companies with implementation by providing technical information and updating the list of participating sources and mitigation options covered in the program, and encouraging new control technologies and monitoring methodologies.

The participant's responsibilities include submitting an implementation plan within six months of the agreement outlining expected activities and milestones for achieving commitments and implementing best management practices for sources across the company's operations to achieve mitigation targets.

EPA is accepting stakeholder feedback on the proposal through Nov. 13, after

previously releasing a revised plan for the program in July following industry criticism of the merits of a previous voluntary plan.

"The proposed Methane Challenge Program incorporates flexibility into several program elements, including implementation timeframes to inspire ambition in a structure that is achievable," EPA said in the revised plan, which replaced a planned Natural Gas STAR "Gold" program that industry doubted would gain any participants.

The new voluntary program aims to build on the success of the agency's existing Natural Gas STAR voluntary program to identify cost-effective technologies and options for voluntary emission reductions from the sector.

The agency is crafting the framework as part of a package to cut the sector's methane emissions in accordance with the President's goal of reducing 40-45 percent of the sector's methane by 2025.

The proposed voluntary program is intended as a partnership between EPA and industry, setting best practices for facilities to cut emissions of methane. As a result, many in industry have urged EPA to allow participation in the voluntary program as an alternative to strict new emissions standards.

Industry has also had success in getting the agency to scrap its 2014 plan for the voluntary program after complaining that it would have been too burdensome and few companies would have participated.

Oil and gas companies said the agency must ensure a new program provides significant flexibility in how and where to reduce emissions, saying it is vital to address if the program is to win the robust industry participation the agency is seeking. -- Bridget DiCosmo

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News Headline: SUPERFUND OFFICE WEIGHING UPDATED APPROACH FOR LEAD-CONTAMINATED SITES |

Outlet Full Name: Inside EPA
News Text: After three years of review, EPA's Superfund office is considering moving forward with changes to its approach to cleaning up lead-contaminated soil, looking to factor in more stringent blood lead levels recommended by the Centers for Disease Control and Prevention (CDC), and changed variables -- such as lower bioavailability factors -- that will likely impact Superfund cleanups and other programs, including EPA's lead-abatement program.

Any new approach is expected to be coordinated agency-wide and likely will go

through interagency review as well, given potential impacts to the Superfund and brownfields programs, lead-abatement program and Defense Department sites, according to an EPA official.

At the same time, the agency is taking longer than originally expected to update its Integrated Exposure Uptake Biokinetic (IEUBK) model, which is expected to reflect the new CDC level as well as other changing factors. The model helps the agency determine screening levels at lead-contaminated sites. EPA has indicated the updates to the model have been harder than expected. The agency expects to complete work on the model in the next six-12 months, according to EPA.

"We're continuing within [the Office of Solid Waste & Emergency Response (OSWER)] to review our approach in addressing lead-contaminated soil both within Superfund and actually more broadly," James Woolford, director of EPA's Office of Superfund Remediation & Technology Innovation, told the Association of State & Territorial Solid Waste Management Officials (ASTSWMO) Oct. 30 at its annual conference in Bethesda, MD.

But Woolford said the agency's general approach to lead-contaminated sites, with a focus on site-specific risk assessments, will not change "wherever we land on this." He noted such assessments include considering the bioavailability of lead in making cleanup decisions and said that the IEUBK model looks at multiple pathways for lead exposure.

"When you look at lead, you have to look at lead holistically," he told the group. "It's not just lead from soils, it's lead from paint, it's lead from toys, it's lead from food, it's lead from the water supply. And so, we'll ask our regions to continue to do that."

EPA in a follow-up statement responding to questions from Inside EPA notes that the CDC recommendation relates to a child's exposure to all lead sources, including paint, soil and consumer products, serving "as a national aspirational goal. EPA is focused on limiting site related lead exposure, taking into consideration CDC's recommendation and other information," EPA says.

The 2012 recommendations from the CDC lowering its screening level from 10 micrograms per deciliter (ug/dL) for lead in children's blood to 5 ug/dL prompted EPA to review its approach to lead-in-soil cleanups. EPA's existing soil screening level of 400 parts per million (ppm) is based on the 10 ug/d goal. Lead exposure is particularly harmful to children, and can lead to lost IQ points and other developmental challenges.

In addition to the CDC blood lead level recommendation, Woolford said his office is also looking at an integrated science assessment used by EPA in developing the National Ambient Air Quality Standards for lead, which he said found a causal relationship for lower IQ in children with blood lead levels between 2 and 8 ug/dL. "So we're looking at all that information right now," he told the ASTSWMO forum.

Woolford said during his presentation that if one were to plug the new CDC reference number into the existing IEUBK model, the soil screening level would drop to 113 ppm, but that number is unlikely to be the final soil screening number due to other changing variables in the model. Later, in an interview, he noted that "our best guess is" the screening level will likely be lower than the current 400 ppm, but also said a lower screening number does not necessarily result in a more stringent cleanup level.

He explained in the interview that the process is complicated, noting other variables are changing such as the bioavailability of lead -- where he says the agency has found lead might not be as bioavailable as originally thought.

But OSWER is working with EPA's Office of Children's Health Protection, the administrator's office and others given the broader ramifications of any changes, with any proposal also expected to go to interagency review, he said at the forum. Changes to requirements could have broad effects -- potentially affecting the hundreds of former lead smelter and other lead-contaminated Superfund sites, as well as Defense Department sites and the lead-abatement program.

In the statement released to Inside EPA, EPA says, "While the details of any potential policy change are still under development, EPA expect[s] that the evaluation of site-specific conditions, in particular bioavailability and background, along with coordination with public health officials to address other lead sources will continue to be the foundation of EPA's comprehensive approach for addressing lead-contaminated sites."

In terms of considering a variety of pathways, rather than just soil, Woolford in the interview gave the example of the Omaha Lead Superfund site in Omaha, NE, where a soil cleanup and lead-based paint abatement were done, and education materials on lead were provided, resulting in blood lead levels in children that decreased to below the new CDC reference level of 5 ug/dL, despite it being cleaned up to 400 ppm in the soil, rather than a more stringent number.

The IEUBK model update to assess human health risks at lead sites is in part still going through peer review, taking longer than originally expected. Sources have said the agency had planned to update the model by July 2014, but last year indicated revising it was harder than expected. In correspondence last year between then-acting Director of OSRTI Robin Richardson and an Illinois local official over a Superfund zinc smelter site, Richardson cited complications in updating the model.

In an Aug. 7, 2014, email, Richardson explained to the official that the CDC's tightened levels have led to more complications than anticipated in updating OSWER's IEUBK model. "It is taking longer than expected because the model was not originally designed to predict blood lead levels that are as low as the current CDC recommendation of 5 ug/dL. As a result, we need to be sure that we rigorously

review the model updates, including changes that reflect the new CDC policy reference concentration for blood lead levels in children. We hope to complete the updates as soon as possible," Richardson wrote.

An agency spokeswoman said at the time that "EPA is working to ensure that we do not either adopt an unachievable cleanup level or adopt revisions to the IEUBK that would not be protective of children."

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News Headline: JUDGES WRESTLE WITH AUTHORITY, REMEDY IN SUIT OVER STRICTER PM AIR PLANS |

Outlet Full Name: Inside EPA
News Text: Appellate court judges at Nov. 6 oral argument in a suit filed by advocates seeking to force stricter fine particulate matter (PM2.5) controls on states wrestled with whether they have authority to hear the case and what remedy they could order, in a case that poses a test for when EPA must retroactively apply certain Clean Air Act mandates.

In the lawsuit, WildEarth Guardians, et al. v. EPA, environmentalists are urging the U.S. Court of Appeals for the District of Columbia Circuit to vacate a June 2014 agency rule imposing stricter air law "subpart 4" PM2.5 control requirements on states prospectively under tight deadlines. The mandates are more stringent than weaker "subpart 1" provisions that the agency used with later deadlines, but which advocates argue are now unlawful.

EPA's rule responded to a 2013 D.C. Circuit ruling in Natural Resources Defense Council (NRDC) v. EPA that said EPA had wrongly implemented its PM2.5 standards under the less stringent "subpart 1" requirements that apply generally to all six national ambient air quality standards (NAAQS). After the ruling, advocates urged EPA to apply the tougher measures in areas that had earlier been deemed in nonattainment with the PM2.5 NAAQS.

The agency's June 2014 rule rejected those calls, making the revised rule prospective because the court did not vacate a separate rule requiring states to submit plans solely under weaker subpart 1 requirements.

Whatever the court rules will have important implications not only for the emissions control plans that states craft for complying with the agency's 1997 PM2.5 national ambient air quality standard (NAAQS) of 65 micrograms per cubic meter (ug/m3) over 24 hours, but also the agency's tighter 2006 limit of 35 ug/m3. A 2012 rulemaking retained the 2006 24-hour standard, but tightened the annual standard from 15 ug/m3 down to 12 ug/m3.

The eventual decision by the panel of Judges Sri Srinivasan, Stephen Williams and Douglas Ginsburg could also set new precedent on the retroactive application of air law requirements. Srinivasan was the only judge to attend argument in person. Williams participated by telephone, and Ginsburg was absent and will review the argument record later.

Environmentalists say EPA lacks legal authority to change deadlines enshrined in the air law -- even where these deadlines may have already passed, and say this means the court must scrap the June 2014 rule.

EPA in the suit claims that this will achieve nothing in the real world, as the jurisdictions primarily affected by the change, which are both in California, are already doing everything possible to comply with the subpart 4 provisions and to meet the NAAQS. The agency in briefing further argued that applying the subpart 4 deadlines as written in the statute would in fact require administrative action by the agency -- and this would be unlawfully retroactive.

The subparts have key differences in how states must craft state implementation plans (SIPs) detailing how they will attain the NAAQS. For example, under subpart 1, EPA has discretion to decide how severe the "nonattainment" status of an area is when it is exceeding the NAAQS, and can extend attainment deadlines by up to 10 years.

In contrast, under subpart 4, EPA must classify an area as in "moderate" or "serious" nonattainment with a NAAQS, attainment deadlines can only be extended five years, and serious areas failing to meet an attainment deadline must then cut pollution by five percent annually.

According to environmentalists' claims in unrelated litigation, states had to submit PM2.5 SIPs to EPA by June 14, 2011, under subpart 4, while EPA says that under the subpart 1 schedule the date was Dec. 14, 2012, according to the original deadlines.

At argument, rather than focusing on the retroactivity dispute, the judges asked most questions on the issue of whether the court has jurisdiction to hear the case, and whether the court can provide meaningful redress.

Attorney Paul Cort, who argued for NRDC in the 2013 case and is representing environmentalists in the PM2.5 suit, faced tough questions on the court's jurisdiction from Srinivasan.

Cort argued that "if there is any legal consequence" of EPA's June 2014 rule, then the court must vacate it because the agency has overstepped its authority by not imposing the tighter deadlines. A legal consequence would include, for example, granting a state longer to submit a SIP showing how it would attain the NAAQS.

"I'm not sure that's right," Srinivasan responded, asking Cort what happens if there is no effective relief that the D.C. Circuit could grant -- and hence no jurisdiction for the court.

Cort replied that the rule does have real-world consequences that can be redressed. If the court were to vacate the rule, it would cut from four years to 18 months the time areas applying for "voluntary" reclassification to a more serious level of nonattainment to submit SIPs. This would be the case for the San Joaquin Valley of California, which along with the South Coast, which covers the greater Los Angeles area, experiences bad PM2.5 pollution.

San Joaquin is seeking reclassification from "moderate" to "serious" nonattainment status, which requires tougher pollution controls but allows areas longer to meet the NAAQS. "If you pick at one thread" of the statute's timelines, "then the whole thing starts to unravel," Cort said.

Judge Williams was consistently skeptical of environmentalists' position. He challenged Cort's position that the deadlines "flow from the statute," saying, "it sounds to me like that is a verbal quibble to say that is not backdating" deadlines. "I assume Congress set the deadlines so that a sensible planning process can go forward," Williams said, asking Cort if the the real consequence of his argument "is a sharply compressed schedule."

Cort replied that 18 months is plenty of time for states to submit their SIPs.

Srinivasan, meanwhile, also said that in the real world, "nobody knew" that subpart 4 deadlines applied. He pressed Cort on why environmentalists want to eliminate the option of areas to voluntarily reclassify and buy themselves more time to submit SIPs, as provided by Congress.

Cort replied that this possibility was intended to bring about better air quality more quickly, by ensuring imposition of tougher controls, but that would not be the case here.

Department of Justice attorney Brian Lynk, representing EPA, said there "is not a tangible consequence in terms of clean air" of forcing states to submit SIPs earlier, as the California areas concerned are already either attaining the NAAQS or otherwise taking all practical steps to limit PM2.5 emissions.

However, vacating the classification rule would create serious confusion in the states, in part because older EPA rules, based on subpart 1, have not been vacated by the D.C. Circuit, notwithstanding its finding in NRDC.

As a result, Lynk said that vacating the classification rule would mean states revert to earlier rules that are inconsistent with that ruling.

Furthermore, there is already litigation brought by environmentalists in the U.S. District Court for the Northern District of California, in Center for Biological Diversity, et al. v. EPA, over EPA's failure to comply with various SIP-related deadlines established by the classifications rule.

Lynk also said EPA has a longstanding legal interpretation that allows the agency more flexibility in conducting reclassifications of areas to more serious nonattainment status than environmental petitioners say is the case. EPA holds the view that it can reclassify an area at any time up until an area's attainment deadline. For the South Coast and San Joaquin areas, this means until June next year, Lynk said.

Environmental petitioners, however, say that EPA is time-limited under the air law at an earlier stage. The law states that for reclassification before the attainment date of an area, "the Administrator shall reclassify appropriate areas within 18 months after the required date for the State's submission of a SIP for the Moderate Area."

Cort contested "EPA's claim that they can re-classify at any time," but in response to assertions from Lynk that the issue is not properly before the court in the present case, conceded that, "maybe that fight is still to come" if environmentalists challenge actual reclassification decisions in the future. -- Stuart Parker

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News Headline: EPA 'EXCEPTIONAL' AIR POLICY OVERHAUL COULD EASE STATES' RULE COMPLIANCE |

Outlet Full Name: Inside EPA
News Text: EPA is proposing to overhaul its policy on when states can discount air pollution associated with "exceptional events" such as dust storms and wildfires from their compliance with Clean Air Act programs, potentially boosting several states as they aim to meet stricter rules including the agency's recently tightened ozone ambient air limit.

One state official, who was still reviewing the plan at press time, offered cautious praise for the updates given states' long-running calls to simplify and accelerate the process for claiming exceptional events. But the proposal might prompt criticism from environmentalists who are wary of allowing many types of air compliance waivers.

In a package of documents released Nov. 10, but not yet published in the Federal Register, EPA announced proposed revisions to the exceptional events policy; draft guidance on how to demonstrate that emissions from wildfires might impact ozone concentrations; and a fact sheet on the regulatory updates. EPA will take comment on the proposed rule revisions through Jan. 19, and hold a Dec. 8 public hearing on

the effort in Phoenix, AZ.

The proposal would update the exceptional events policy from 2007 to simplify the process for states to win the agency's acceptance of an event as "exceptional." If EPA concurs that events qualify, states can exclude air quality data gathered during these events from reporting for the purposes of compliance with national ambient air quality standards (NAAQS). Relevant documents are available on InsideEPA.com. (Doc. ID: 186481)

The rule will have particular significance for Western states' compliance with EPA's new, tougher ozone NAAQS of 70 parts per billion (ppb) issued Oct. 1, which is stricter than the prior 75 ppb standard set in 2008.

EPA has touted exceptional events exemptions as one way states can cope with naturally-occurring high ozone levels that would otherwise push them in nonattainment with the new ozone limit. Areas in NAAQS nonattainment must impose costly pollution controls on industry, and might try to limit industrial growth to avoid emissions increases. Critics of the stricter NAAQS say that nonattainment status drives industries away from such areas.

In the proposed regulatory update, the agency says that it "intends to promulgate these rule revisions in advance of the date by which states, and any tribes that wish to do so, are required to submit their initial designation recommendations for the revised 2015 ozone NAAQS (expected in October of 2016)."

EPA in its new proposed rule admits that implementation of the existing exceptional events policy has been tough, with states experiencing long delays in getting their data exclusion requests approved by EPA regional offices. States have often complained that ambiguity in the rule's requirements has lead to confusion among state air agencies and inconsistent interpretations of what such requests must include.

"Interpreting and implementing the 2007 Exceptional Events Rule has been challenging in certain respects both for the air agencies developing exceptional events demonstrations and for the EPA Regional offices reviewing and acting on these demonstrations," EPA says. The agency in May 2013 issued interim guidance to states that aimed to help clarify the rule's requirements, but many states found this to be inadequate.

The agency's proposed solution is to return to an interpretation of the Clean Air Act provisions on exceptional events that predates the 2007 rule, and should reduce the burden on states to show that events qualify as exceptional.

EPA is proposing to structure its rule around three Clean Air Act provisions that it says are fundamental: that the event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored NAAQS exceedance or violation; the event was not reasonably controllable or

preventable; and that the event was a human activity that is unlikely to recur at a particular location or was a natural event.

The agency proposes significant changes to the existing rule, such as revising the definition of exceptional event by allowing states to consider the combined effects of an event and the resulting emissions, a new concept.

EPA further proposes to eliminate a current requirement that states show they would have complied with a NAAQS "but for" the exceptional event causing high levels of pollution, which states have complained is too difficult to prove.

The agency is also proposing to find that states automatically meet the requirement that the event was "not reasonably controllable or preventable" if they have in place measures to prevent pollution from the affected sources under an EPA-approved state implementation plan (SIP) for NAAQS attainment or maintenance.

EPA proposes to subsume an existing rule requirement that an event "affected air quality" under the "clear causal relationship" requirement, on the basis that affecting air quality is evidence of a causal relationship.

Also, the agency proposes easing an existing requirement that the event is associated with a measured concentration of pollution in excess of normal historical fluctuations including background, by removing the term "historical fluctuations," and instead requiring a comparison of the event with historical levels of pollution but not proof that the event was "in excess of" those historical levels. This responds to longstanding state complaints that proving an event caused pollution in excess of historical levels is too onerous, given the difficulty of calculating such historical levels.

EPA is easing certain deadline requirements for states to submit various documents in support of exceptional events requests. "Because affected air agencies have provided feedback regarding the difficulty associated with meeting the current regulatory timelines associated with data flagging, initial event descriptions and demonstration submittals, the EPA proposes to remove the specific deadlines that apply in situations other than initial area designations following promulgation of a new or revised NAAQS," EPA says in the proposed rule.

In addition to the proposed rule, EPA has published its draft guidance document dealing specifically with the issue of wildfire, a major cause of high ozone levels in some states. Fires produce high levels of ozone, and also smoke, which contains particulate matter, another NAAQS pollutant, EPA notes in the guidance.

The guide addresses the circumstances under which wildfires may be distinguished from intentional "prescribed" fires that are undertaken by land managers, including the federal government, for environmentally beneficial reasons.

Under the proposed rule, federal land managers or agencies will be able, under certain circumstances, to submit exceptional events requests regarding fire-related events directly to EPA, rather than working with states to submit them.

EPA proposes to codify existing provisions, established in guidance, allowing prescribed fires to qualify as exceptional events when states have certain safeguards and policies in place. The agency says it expects an increase in exceptional events requests for wildfires, as climate change increases the frequency and severity of wildfires.

Also, EPA notes that states and federal land managers may use prescribed fires to limit the potential for catastrophic wildfire, and that in certain circumstances land managers may let wildfires burn, within limits, to achieve the same goal. The agency says it intends "to make the preparation and review of demonstrations for wildland fire events more efficient and predictable for all parties."

In addition to the draft guidance on wildfire, EPA is also announcing that it is working on another guidance document that will advise states on how they can win regulatory exemptions for high pollution events outside the construct of the exceptional events rule.

The guidance "will describe the appropriate additional pathways that we intend to make available for data exclusion for some monitoring data applications (e.g. predicting future attainment that is the basis for approval of an attainment demonstration in the SIP for a nonattainment area, preparing required air quality analyses in an application for a [prevention of significant deterioration (PSD)] permit or preparing required air quality analysis for the purposes of transportation conformity)," EPA says in the proposed rule.

PSD air permits are required by new or modified major sources of air pollution -- those emitting 100 tons per year (tpy) or 250 tpy of a NAAQS pollutant, depending on the pollutant. Transportation conformity is the requirement for local air regulators to ensure that transportation projects do not cause NAAQS violations. -- Stuart Parker

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News Headline: CITING 'AMERICAN LEADERSHIP' IN PARIS TALKS, OBAMA REJECTS KEYSTONE PIPELINE |

Outlet Full Name: Inside EPA
News Text: Linking the decision to fast-approaching international talks in Paris to address climate change, President Obama has rejected a key permit for the controversial Keystone XL tar sands pipeline that had become a major symbol in longstanding disagreements on energy and climate issues.

Obama announced the decision to reject a finding that the pipeline was in the "national interest" during a Nov. 6 address at the White House, flanked by Vice President Joe Biden and Secretary of State John Kerry.

"The United States is now a global leader when it comes to taking action on climate change," Obama said, citing "American leadership" as a key factor driving more than 150 countries to submit climate mitigation pledges as part of next month's Paris talks.

"Approving this project would have undercut that global leadership. And that's the biggest risk we face -- not acting," the president said.

That leadership may already be proving apparent, helping the the administration secure stronger commitments from other countries than it otherwise might have. For example, Chinese leaders reportedly agreed to a personal request from Obama for a steeper emissions reduction commitment based in part on the president's commitments, according to former EPA Administrator William Reilly.

Obama also cited three additional factors for rejecting the Keystone pipeline, which would have carried high-carbon Canadian tar sands to refineries along the Gulf of Mexico.

Obama said Keystone "would not make a meaningful long-term contribution to our economy" and that it would not lower gas prices -- as evidenced by the precipitous fall in gas prices over the past several years. He also said it would not boost the country's "energy security," given that the United States has been increasing domestic oil supplies for years and now produces more oil than it buys from other countries.

Environmentalists hailed the move as the first major fossil fuel project rejected because of its climate impact. "Rejecting Keystone XL is a critical step forward as we reduce our dependence on fossil fuels," billionaire climate advocate Tom Steyer said in a statement. "It's time for our leaders to continue this momentum by laying out a plan that will get us to more than 50 percent clean energy by 2030."

The World Resources Institute's Jennifer Morgan added that "the rejection of the Keystone pipeline is a signal that should reverberate to all parties involved in the Paris climate talks. It shows that the Obama administration is serious about moving the country toward clean, renewable energy sources."

Industry groups and congressional Republicans -- who earlier this year failed to override Obama's veto of legislation to approve the project -- were sharply critical, however. "This decision will cost thousands of jobs and is an assault to American workers. It's politics at its worst," the American Petroleum Institute said in a statement, adding that "the White House has placed political calculations above sound science."

Although Obama said Keystone would not be the "express lane to climate disaster," he said little else that would undercut advocates' interpretation.

"Today we're continuing to lead by example," he said. Arguing that if policymakers want to "prevent large parts of this earth from becoming inhospitable . . . we're going to have to keep some fossil fuels in the ground rather than burn them and release dangerous pollution into the sky."

Underscoring the administration's long-standing argument on fossil fuel development, the president said the United States "will continue to rely on oil and gas as we transition -- as we must transition -- to a clean energy economy. That transition will take some time, but it's also going more quickly than any anticipated."

The Keystone decision will likely be cited by environmentalists to continue a push to reject fossil fuel extraction projects, given that they have been criticizing the administration for approving domestic coal and natural gas infrastructure even as it moves forward with a host of regulations intended to restrict greenhouse gas emissions in the electricity, transportation and other sectors.

The Keystone permit decision -- which has been pending for seven years -- has until recently been a source of friction between the United States and Canada.

Former Prime Minister Stephen Harper, a member of the Conservative Party who hailed from oil-rich Alberta, had been an ardent proponent of the project. But Harper's party recently lost its hold on parliament, ushering in new Prime Minister Justin Trudeau of the Liberal Party.

Trudeau supported Keystone, though he has also pledged to be more aggressive than Harper on climate issues.

During his address, Obama said that he spoke with the Canadian leader, who "expressed disappointment." But he said they "both agreed that our close friendship on a whole range of issues, including energy and climate change, should provide the basis for even closer coordination going forward."

The president also argued that Keystone has "occupied what I frankly consider to be an over-inflated role in our political discourse." He argued the pipeline was used as a "campaign cudgel for both parties rather than a serious policy matter." -- Lee Logan

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News Headline: Court Rules EPA Leader Must Give Deposition in Coal Case |

Outlet Full Name: New York Times Online, The

News Text: WHEELING, W.Va. — A federal judge has ruled U.S. Environmental Protection Agency Administrator Gina McCarthy must give a...

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News Headline: Seeking Information, VW Offers Amnesty to Employees |

Outlet Full Name: New York Times, The
News Text: Volkswagen, trying to get to the bottom of its emissions-cheating scandal, on Thursday pressured employees to tell what they know, announcing an amnesty program for informants that will expire at the end of the month.

The company has yet to explain publicly who was responsible for installing software in 11 million diesel vehicles that was designed to disguise the output of nitrogen oxide, a pollutant harmful to the lungs. Volkswagen also admitted, just last week, that it underreported the levels of carbon dioxide produced by about 800,000 of its diesel and gasoline vehicles in Europe and that had it exaggerated their fuel economy.

In a letter to employees on Thursday, Herbert Diess, chief executive of the division that produces Volkswagen brand cars, said people who provided information would not be fired or face damage claims. Mr. Diess cautioned, though, that the company could not shield employees from criminal charges.

The amnesty offer is valid through Nov. 30, Mr. Diess wrote, according to excerpts from the letter reviewed by The New York Times. The offer applies only to workers who are covered by collective bargaining agreements; it excludes top management.

While corporate amnesty programs are rare, the approach has been used successfully in Germany at least once before. Siemens, an electronics and engineering company based in Munich, used such an offer in 2008 to encourage employees to provide information during an investigation into bribery of officials abroad. Dozens of employees came forward.

Legal experts said it is unclear how often corporations in the United States offer job amnesty to employees in investigations. That is because, typically, there is little public reporting about the inquiry, the investigations are conducted quietly within the company, and there is often an effort not to alert large numbers of employees to avoid the possible destruction of evidence.

"It is not a common practice," said Alexandra Wrage, president of Trace International, a company in Annapolis, Md., that provides advice to companies on compliance issues. "It's a tacit admission, however, that the usual reporting channels have been ineffective."

By offering job amnesty, Volkswagen might accomplish two things, said Mike Koehler, a law professor at Southern Illinois University who conducted internal investigations for nearly a decade while in private practice: Demonstrate to law-enforcement agencies that it is pursuing all avenues in its internal investigation, and reach out beyond the company's executive ranks to better understand what happened.

"The amnesty program is not so much designed for the people who are viewed as culpable actors, but rather, for the midlevel people who may have, without even knowing it, some relevant information," Mr. Koehler said. "That kind of information may be minor in scope, but it's the cumulative effect -- the pieces of minor information put together lead to a more defined picture for the company."

At Volkswagen, an internal whistle-blower was responsible for uncovering the exaggerated carbon-dioxide and fuel-economy claims, which the company disclosed last week. German news media reports have said that internal investigators looking into the emissions-cheating software, which came to light in September, have been hampered by a reluctance among employees to come forward.

By setting a tight deadline, Volkswagen may be trying to pressure people with knowledge to speak up soon. The internal investigation is being conducted by Jones Day, a law firm.

"Every single day counts," Mr. Diess wrote. "We are counting on your cooperation and knowledge as our company's employees to get to the bottom of the diesel and CO2 issue."

Volkswagen previously had an internal ombudsman's office that employees could go to with concerns. The company did not have a formal amnesty program until Thursday.

Analysts and people with knowledge of the investigation said it was likely that a substantial number of people were involved in creating and installing the software, and that a larger group may have been aware of it and failed to take action. The software was installed on several generations and types of diesel engines from the 2009-15 model years.

Prosecutors in Braunschweig, a city near Volkswagen's base in Wolfsburg, have been investigating the case, and have not made any arrests.

Although the company said it could not offer amnesty from criminal prosecution, if employees who come forward later faced criminal charges, "we will draw the attention of the authorities to the willingness to cooperate," Mr. Diess wrote. "Past experience has shown this speaks in the employee's favor."

He also said that Volkswagen reserved the right to transfer employees who come forward to another job, or to give them different responsibilities.

Also on Thursday, Martin Winterkorn, who resigned as chief executive of Volkswagen in September within days of the emissions cheating coming to light, has cut his last formal tie with the carmaker by resigning as chairman of the supervisory board of its Audi division. Julio Schuback, an Audi spokesman, confirmed on Thursday that Mr. Winterkorn resigned on Wednesday. Mr. Schuback said he could not comment on why Mr. Winterkorn remained on the board for more than a month after resigning as chief executive.

Mr. Winterkorn, who stepped down in September, maintained that he had been unaware that software in the diesel vehicles was designed to deceive regulators. The software could recognize when a car was being tested and turn up emissions controls.

At the other times, the cars emitted up to 40 times the amount of nitrogen oxide allowed by United States regulations. The cars had better performance and fuel economy when the emissions controls were turned down.

Under German law, members of a company's supervisory board can be removed only by shareholders, so it would have been legally cumbersome to force Mr. Winterkorn to leave the Audi board.

Volkswagen owns 99.5 percent of Audi shares, but a small number are still held by outside investors. As a result, Audi must fulfill the legal requirements for companies listed on the stock market. Audi would have had to call a shareholders meeting to remove Mr. Winterkorn.

Volkswagen formed Audi in 1969 by combining two other carmakers, Auto Union and NSU Motorenwerke, which earlier in their histories had been independent.

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News Headline: HUD wants to make public housing smoke-free |

Outlet Full Name: Providence Journal Online, The
News Text: ...that residents of public housing are provided with the best possible environment to live and raise a family." Barbara Fields said. Matter...

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Outlet Full Name: Advocate Online, The
News Text: ...of the more than $1.3 million being made aware for Long Island Sound environmental projects. The projects, which are funded through the...

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Outlet Full Name: Advocate Online, The
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Outlet Full Name: Greenwich Time Online
News Text: ...have approved General Electric's plan to dismantle a Hudson River PCB cleanup plant used during six years of dredging, which concluded...

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News Headline: CERCLA MINING FINANCIAL RULE WILL SET PRECEDENT FOR OTHER SECTORS |

Outlet Full Name: Inside EPA
News Text: EPA officials recently stressed at a state waste managers' forum that the agency's upcoming Superfund financial assurance rule for the hardrock mining industry will establish the framework for any future financial assurance rules the agency decides to develop for other industry sectors.

"There's still a lot of work to be done obviously, but this is going to lay . . . the precedent for the other sectors," EPA Office of Superfund Remediation & Technology Innovation Director Jim Woolford said Oct. 30 of the agency's upcoming hardrock mining financial rule under the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA). Woolford spoke during a break-out session at the Association of State, Territorial Solid Waste Management Officials' (ASTSWMO) annual meeting in Bethesda, MD.

At the same time, states are continuing to grapple with EPA over ensuring that the mining regulation will not preempt states' existing state financial warranty requirements for mining companies, with states and EPA further discussing the issue on an Oct. 21 teleconference call, according to an official with the Interstate Mining Compact Commission. The compact facilitated the call, which also included state regulators, representatives of the Western Governors Association, ASTSWMO and some state attorneys general (AGs) offices.

While industry parties have fought against a Superfund financial assurance rule for the hardrock mining sector, EPA reached a pending legal agreement with environmentalists in late August to propose the hardrock mining financial assurance regulation by the end of next year and finalize it a year later, and also agreed to determine by December 2016 whether it will issue proposed rulemakings for any of three other sectors it identified as potential candidates for financial assurance requirements (Inside EPA, Sept. 4).

The agreement follows a May 19 order from the U.S. Court of Appeals for the District of Columbia Circuit in In re: Idaho Conservation League, et al. ordering the agency to update its schedule for issuing the hardrock mining rules and heavily criticizing the agency for its lack of progress in writing the rules. While Congress required EPA by 1983 to identify classes of facilities for which to develop financial assurance requirements, it did not establish a date-certain for promulgating rules, only saying such rules should be issued sometime after December 1985.

In the case, environmental groups asked the court to issue a writ of mandamus requiring EPA to finalize rules under section 108(b) of CERCLA. The section set out the 1983 requirement for identifying classes of facilities, and then called for issuing financial assurance rules. Financial assurance requires that owners of facilities treating, storing or disposing of hazardous waste can prove they have sufficient funds to pay for cleanup and post-closure care of a facility; to pay for cleanup of any accidental releases; and to compensate third parties for any damage, EPA's website says.

The agency in 2009 identified three other sectors -- chemical manufacturing; petroleum and coal products manufacturing; and electric power generation, transmission, and distribution -- for which it is weighing similar rules.

With the focus on the hardrock mining rule, attention has primarily been coming from western states, but EPA officials and an Alaska Department of Environmental Conservation (DEC) official emphasized at the conference that other states should pay attention as any rules affecting the other sectors will impact all states. The hardrock mining rule will contain both general provisions and mining-specific provisions, Sonya Sasseville, with EPA's Office of Resource Conservation & Recovery, told the group. "So if you potentially care about those general provisions in terms of the other sectors, it's worth paying attention to the hardrock mining rulemaking," she said.

Woolford then underscored that the hardrock rule "sets the framework so when we go forward with the other sectors, we're not going to start from ground zero again." Rather, the agency wants to build on the work done under the mining rule. He stressed that stakeholders should watch how the rule evolves and how the agency goes through the process of getting information for financial assurance, for instance.

Sasseville noted that it is still undecided whether the agency will actually write rules for the other sectors.

EPA as part of its submittal in August to the D.C. Circuit in reaching the agreement with environmentalists over the financial assurance rules included a framework for the mining rule explaining how various parts of the rule will function. Included in the framework is the agency's view that its section 108(b) rules are not aimed at preempting state mining reclamation and closure requirements.

Alaska DEC official Jennifer Roberts, who moderated the break-out session at the ASTSWMO forum, said there has been much discussion among western states about preemption of state rules through the upcoming section 108(b) rule.

States continue to want assurances that EPA's rule will not preempt states' financial assurance regulations, according to the Interstate compact source, who says that states on the Oct. 21 call with EPA sought to make certain the agency fully understood the breadth of what states have in terms of rules, which include reclamation and closure requirements and, in some cases, separate spill funds.

Under CERCLA section 114(d), owners or operators subject to CERCLA financial responsibility rules cannot be required under any state rules to establish evidence of financial responsibility "in connection with liability for the release of a hazardous substance from such facility." If preemption were to occur, a mining company could sue, arguing that the state rules are preempted by the CERCLA rules.

The Oct. 21 call was a "positive, proactive" discussion, but states were still left with many questions and "uncertainty" about how EPA and states' programs will interact, the compact source says.

At the ASTSWMO meeting, Roberts asked EPA officials if they had figured out an answer yet.

Sasseville responded that EPA has, and that the agency took input from ASTSWMO and state AGs, who sent letters on the matter. EPA's interpretation aligns with "some of the thinking" the agency heard from state AGs' offices, she said.

She said the agency believes that state regulations "do something very different compared to what 108(b) does." Section 108(b) financial assurance is for "liability associated with the management of hazardous substances" and relates to activities that Superfund covers when performing a cleanup, while state regulations are generally about assuring that state mining regulations are met, such as closure and long-term care.

"So we're saying those are very different, and therefore that preemption does not occur," she said.

She added that this aligns with the thinking put forth by state AGs' offices.

States are aligned with one another and support the way in which the Colorado AG's office in a 2011 letter laid out to EPA how the CERCLA requirements and state regulations can co-exist without preemptions, according to the compact source. The issue is how EPA writes the rule and the preamble to the rule, the source says.

In the Colorado AG letter, the office notes that the state's "financial warranties do not address an operator's ability to pay for response costs," but rather "assure compliance with reclamation requirements."

Similar to Colorado, "most other states use financial assurances to secure reclamation obligations," the letter says. "By focusing on operators' ability to pay for response costs, EPA can fill a discrete gap, complement existing state programs, and provide an additional layer of protection for the taxpayer," it says.

States believe there is a path EPA can follow, but that it could be a "pretty critical decision with regard to the integrity of our existing requirements," the compact source says.

Other questions separate from the preemption issue also remain over which minerals are included under the rule, which financial instruments are to be used under the rule and whether EPA has a full understanding of what the surety industry can provide, the source says. -- Suzanne Yohannan

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News Headline: IN WAKE OF EPA SPILL, LAWMAKERS PUSH VARIETY OF MINING CLEANUP BILLS |

Outlet Full Name: Inside EPA
News Text: With heightened public attention on the Aug. 5 EPA mine wastewater spill in Colorado, lawmakers in both chambers of Congress are beginning to push a variety of abandoned mine bills aimed at preventing future spills and sparking cleanups at some of the estimated 500,000 abandoned hardrock mines across the West.

But Republicans and Democrats so far are taking different paths, with GOP members primarily focused on "Good Samaritan" legislation and related measures to spark private funding of cleanups and Democrats generally pushing for reforms of the 1872 mining law including the adoption of fees on hardrock mining operations to help pay for abandoned mine cleanups.

House GOP lawmakers Nov. 4 held a legislative hearing on a pair of bills -- one aimed at stripping away liability concerns and propelling Good Samaritan cleanups --

or voluntary remediation by parties that did not cause the contamination -- and another to set up a reclamation foundation to encourage abandoned mine cleanups.

Some witnesses at the hearing viewed the bills as "promising," suggesting changes around the edges but also advocating for a robust funding stream for cleanups.

At the same time, Democratic senators Nov. 5 introduced legislation to reform the 1872 mining law with measures imposing a royalty rate on new mining operations and a separate fee on new and existing mines, all of which would feed into a reclamation fund to pay for cleanup of abandoned hardrock mines. Relevant documents are available on InsideEPA.com. (Doc. ID: 186293)

The measures come in the aftermath of the Aug. 5 Gold King Mine blowout that spilled 3 million gallons of wastewater from the mine into Colorado's Animas River when an EPA contractor was attempting to conduct preliminary cleanup work.

Sens. Tom Udall (D-NM), Martin Heinrich (D-NM), Michael Bennet (D-CO), Ron Wyden (D-OR) and Edward Markey (D-MA) Nov. 5 introduced legislation dubbed the Hardrock Mining and Reclamation Act, aimed at ensuring mining companies pay royalties on the extraction of mineral resources from public lands and that taxpayers are not left paying for abandoned mine cleanups, according to a Nov. 5 press release from the senators.

"The Gold King Mine blowout proves that the status quo just isn't working, and New Mexico and Navajo Nation communities are suffering the consequences," Udall said in a statement. "Gold and silver on public lands are a natural resource, just like oil and gas. Taxpayers deserve their fair share of the profit -- and communities across the West need that money to clean up abandoned mines," he said.

The bill would set a 2 to 5 percent royalty rate -- decided by the Interior secretary -- on new mining operations, based on gross income from production, and levy a separate reclamation fee of 0.6 to 2 percent on new and existing mines. Both fees would go into a hardrock mines reclamation fund to be distributed to federal agencies, states and tribes for hardrock mine cleanup. The bill would also establish a grant program to provide funds to Good Samaritans and other organizations to carry out restoration projects, Udall said, speaking on a Nov. 5 press call.

The Senate bill would also require permits for non-casual exploration and mining on federal land, including requirements such as avoiding acid mine drainage; require rental payments for claimed public land, characterizing mine operators as other public land users; grant the Interior secretary the authority to offer royalty relief depending on economic factors; and permit states and tribes to petition the Interior Department (DOI) to withdraw lands from mining, according to the press release and a bill summary.

In response to questions on the press call, Heinrich said he did not see the bill as

competing with Good Samaritan measures, noting the two are related but separate. Heinrich is working separately with Bennet and Sen. Cory Gardner (R-CO) on bipartisan Good Samaritan legislation as well.

The mine reclamation bill as introduced has no Republican support, but Udall said he hopes all stakeholders view the bill "as something that they could work with us on." He said as the senators have worked on the bill, "we've had some very encouraging comments," and he pointed out that the House in 1995 and 2007 passed bipartisan mining reform bills, including one newly elected House Speaker Paul Ryan (R-WI) supported. "Paul's in my class coming into the Congress, and so I hope I can work with the new speaker on this issue," he said.

At the Nov. 4 House hearing, Energy and Mineral Resources Subcommittee Chairman Doug Lamborn (R-CO) sought recommendations on his bill, H.R. 3843, and a bill sponsored by Rep. Jody Hice (R-GA), H.R. 3844.

The first bill includes a Good Samaritan provision that would waive liability for any "good faith" actor who cleans up abandoned mines if that actor obtains a permit to ensure that its activities assist in "the attainment of applicable water quality standards to the extent reasonable and practicable under the circumstances" and that the activities do not result in water quality that is worse than the baseline water condition.

H.R. 3844 would establish a reclamation foundation -- or group of experts on mining issues to "encourage, obtain, and use gifts, devices, and bequests for projects to reclaim abandoned mine lands and orphan oil and gas well sites." The foundation would be appointed through DOI and would be "a public and private partnership," Hice said previously.

Testifying before the committee, Trout Unlimited President and CEO Chris Wood said, "These two bills represent promising steps," but suggested changes around the edges, for instance saying a National Environmental Policy Act limitation in the legislation was unnecessary. He said even if a "perfect Good Samaritan bill" is passed and implemented, "the work will not get done without adequate funding."

Passage of H.R. 3844 "would in no way obviate the need for Congress to find an analogue for western hardrock mining similar in size and scope to the coal [abandoned mine lands] program," he said.

Lamborn said he planned to take recommendations under advisement from Pennsylvania Bureau of Abandoned Mine Reclamation Director Eric Cavazza, a witness at the hearing. Lamborn said he has sought to reach consensus on the permitting process under his bill, but asked Cavazza whether the bill perhaps "goes too far in paperwork and red tape that would snarl up projects before they got off the ground."

Cavazza did not directly answer the question but gave his experience with grassroots-level efforts to get mining sites cleaned up.

House Democrats on the subcommittee contended the bills under consideration were too narrow and tinkering around the edges, although subcommittee Ranking Member Alan Lowenthal (D-CA) expressed interest in the concept behind the foundation bill, H.R. 3844.

Nonetheless, Lowenthal said H.R. 3844 may be too narrow in its purpose and should include a broader array of board members. He said he has worked on a Bureau of Land Management foundation bill and would like to see if there is a way to combine ideas on both for bipartisan legislation.

Meanwhile, the EPA Office of Inspector General (OIG) has expanded its investigation into the Gold King Mine spill, in response to a congressional request, and in light of issues disclosed in the Bureau of Reclamation's (BOR) October report on the incident, according to a Nov. 4 memo from the IG. The IG Aug. 17 announced initiation of a review of the Aug. 5 wastewater release in response to an initial congressional request.

The memo lists a variety of matters the OIG is studying, including how EPA assured the independence of the BOR assessment and the "basis for material differences between the [BOR] report and other official EPA or EPA OIG information collected on the factors that led to the Gold King Mine release." -- Suzanne Yohannan

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News Headline: New Bedford reaches record settlement in lawsuits against PCB polluters |

Outlet Full Name: SouthCoastToday.com
News Text: ...announced a record $8.5 million settlement in lawsuits stemming from PCB contamination at the Parker Street Waste Site and at the old...

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News Headline: EPA Approves GE Plan to Shut Down New York Dredging Plant |

Outlet Full Name: Wall Street Journal Online
News Text: ...work along the upper Hudson River in Waterford, N.Y. in May. The U.S. Environmental Protection Agency on Thursday approved...

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News Headline: Bridgeport-Trumbull sewer deal awaits Ganim |

Outlet Full Name: Advocate Online, The
News Text: ...this deal with Mayor Ganim." Bridgeport has processed Trumbull's wastewater since the 1960s because the town does not have a...

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News Headline: French activists 'reclaim' chairs to protest climate change |

Outlet Full Name: Associated Press Online
News Text: ...branches in a protest linked with the upcoming Paris talks on fighting global warming. The group says Thursday it will use the...

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Outlet Full Name: Beacon Hill Times, The
News Text: __

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News Headline: Clinton releases plan to help coal country adapt to climate |

Outlet Full Name: Greenwich Time Online
News Text: ...campaign announced a $30 billion plan to help coal country adapt to new climate change policies that could have a striking economic...

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News Headline: EPA AIMS TO FINALIZE HAZARDOUS WASTE POST-CLOSURE CARE GUIDE IN SPRING |

Outlet Full Name: Inside EPA
News Text: EPA officials say the agency expects to finalize in the spring guidance that aims to assure state regulators of their discretionary authority to lengthen beyond 30 years the period when hazardous waste landfills must monitor for potential releases following closure, responding to feedback from states and others on how to strengthen a draft version of the policy.

The Association of State & Territorial Solid Waste Management Officials (ASTSWMO) has pushed for the post-closure care (PCC) guidance, urging EPA to support the presumption that PCC requirements would continue beyond the initial 30-year PCC period as long as waste remains in place.

And EPA officials at ASTSWMO's annual meeting in Bethesda, MD, Oct. 30 said the agency expects to release a final version of the PCC guidance in the spring.

Tammie Hynum, chair of ASTSWMO's Hazardous Waste Subcommittee, responded at the forum that states want to encourage the release of the guidance, but would nonetheless like to briefly review the agency's revised version before it is finalized.

Under Resource Conservation & Recovery Act (RCRA) subtitle C regulations governing hazardous waste management, owners or operators of hazardous waste disposal facilities follow PCC requirements for a 30-year period after closing a unit. But the regulations also "provide discretionary authority to the permitting authority to extend or shorten the length of the post-closure care period," Barnes Johnson, director of EPA's Office of Resource Conservation & Recovery, says in the April 29 draft guidance. PCC involves specific monitoring and maintenance activities that facility operators or owners must undertake after a waste unit is closed to ensure the integrity of waste containment systems and to prevent releases of hazardous pollutants, the guidance says.

The PCC requirements apply to land disposal units where hazardous waste is left in place after closure, such as landfills, land treatment units, surface impoundments, or other units, according to the guidance.

EPA committed to writing the guidance after state regulators pressured EPA to issue guidance because many waste facilities were nearing the end of their 30-year PCC period covered by the regulations.

States, according to July 31 written comments recently posted by EPA on its PCC website, called for EPA to strengthen the draft version of the guidance, for instance saying the agency should advocate for continued post-closure care with the continued presence of waste in a unit after closure.

At the same time, though, industry commenters on the guidance have called on the agency to pare back language that may overly favor extending PCC beyond 30 years. As the guidance is currently written, the document "would make it nearly impossible for a post-closure care period to be shortened or ended," the American Petroleum Institute wrote in July 31 comments.

"Even though EPA and delegated states have the authority to extend the 30 year post-closure period, it was certainly not EPA's original intent in developing the post-closure regulations to have post-closure care last in perpetuity," API says. The industry group says EPA is effectively recommending that no facilities would exit

PCC. Relevant documents are available on InsideEPA.com. (Doc. ID: 186310)

And the Environmental Technology Council, which represents recycling, waste treatment and disposal firms, says in July 31 comments that "While the guidelines set forth the relevant criteria for states to consider, we feel the document as a whole places greater emphasis on extending the post-closure care period rather than a balanced approach. It is important that the guidelines be used to extend or shorten post-closure care based on the relevant site-specific factors, and that the criteria be fair and balanced and not overly weighted toward one result."

In the draft guidance, EPA says decisions about extending or shortening the PCC period must be based on protecting human health and the environment, and advises regulators to make decisions about adjusting the PCC period long before the existing monitoring period ends.

The agency describes an array of criteria for regulators to use on a site-specific basis to evaluate whether to adjust a PCC period, but notes that each of the criteria "is not necessarily appropriate for every unit in post-closure care."

The first criterion to consider is the "presence of hazardous waste," with EPA noting that many hazardous wastes degrade slowly or not at all, which could potentially pose unacceptable impacts on the environment or human health in the future, the guidance says. Regulators should also consider the type of unit the waste is in; the leachate, such as the leachate generation rate and leachate collection system integrity; and groundwater, for instance whether groundwater quality is in compliance with current standards, among other factors.

EPA in the draft document also calls for accounting for the potential impacts of climate change and vapor intrusion -- factors that were likely not considered when many of the facilities' permits were issued, the draft guidance says.

ASTSWMO in its comments says that regarding the "presence of hazardous waste" criterion, EPA should "strengthen the statements in the document on the need for post-closure care beyond 30 years at units closed with waste in place even in the absence of current evidence of releases from the regulated unit." EPA should make it clear "that the continued presence of waste in a unit after closure implies a need, unless demonstrated otherwise, for post-closure care to continue to assure protection of human health and the environment."

States also call for broadening the evaluative criterion on the "integrity of the cover system" to include the "viability of engineering and institutional controls," as ending PCC may affect not only the cover but other aspects that were relied on at closure for maintaining a safe condition, ASTSWMO says.

The group advises other modifications and warns that it may be difficult to consider the effects of climate change such as flooding if the historical record for the area is

no longer valid due to changed conditions. The recommendation could lead to inadequately protective decisions in cases where PCC is allowed to end because flooding is not expected based on historical records, or could lead to legal challenges if there is not a scientific basis for substantiating potential flooding, it says.

But industry says the agency could strengthen its guidance by recognizing alternative options to PCC. "Most significantly, the guidance fails to adequately emphasize the institutional controls (ICs) and engineering controls (ECs) that states can impose through state authorities, such as the Uniform Environmental Covenants Act and similar laws," API says.

The RCRA Corrective Action Project -- comprised of industry representatives -- and the American Chemistry Council, which represents chemical companies, advise three changes in July 31 joint comments to strengthen the guidance. These include "greater recognition of (1) EPA's 1998 Post-Closure Permit rule, which recognized that site-wide corrective action can be done in lieu of closure and post-closure and that enforceable documents other than permits are often the best way to manage post-closure care, (2) the expanded availability of enforceable environmental covenants in many States, and (3) the RCRA program's overall need to transition sites over to a long-term stewardship regime, rather than retaining perpetual RCRA jurisdiction."

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News Headline: Paris Climate Talks Not Just Hot Air, France Tells U.S. |

Outlet Full Name: New York Times Online, The
News Text: Any global climate change deal reached in Paris next month will be legally binding and have a concrete impact, France's foreign...

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News Headline: France Says Climate Talks Must Produce Binding Deal |

Outlet Full Name: New York Times, The
News Text: PARIS -- French officials said on Thursday that any agreement at the coming climate conference in Paris would have to be legally binding, expressing alarm at comments by the American secretary of state that suggested the opposite.

President Fran□ois Hollande of France, speaking to reporters at a summit meeting of European and African leaders in Malta, said that "if the agreement is not legally binding, there is no agreement," because there would be no way to verify that countries had enforced their pledges.

In an interview with The Financial Times on Wednesday, the secretary of state, John

Kerry, said that the agreement was "definitively not going to be a treaty" and that although it would push for a significant amount of investment to support low-carbon economies, there were "not going to be legally binding reduction targets like Kyoto."

The 1997 Kyoto Protocol, which was signed by the United States but not ratified by the Senate, set out mandatory cuts in carbon dioxide emissions for all the countries that signed it.

The French foreign minister, Laurent Fabius, speaking on the sidelines of the summit meeting in Malta, which focused on migration, described Mr. Kerry's choice of words as unfortunate. "There are going to be discussions between jurists on the shape of the agreement, that is not a surprise," he said, "but the discussions in Paris must produce tangible results, and that is not debatable."

In Washington, State Department officials were quick to clarify Mr. Kerry's position. "The F.T. interview with Secretary Kerry may have been read to suggest that the U.S. supports a completely nonbinding approach," a State Department official said, speaking on the condition of anonymity because the department had not released an official statement on the matter. "That is not the case, and that is not Secretary Kerry's position. Our position has not changed: The U.S. is pressing for an agreement that contains both legally binding and non-legally binding provisions."

The disagreement highlighted the uncomfortable fit between American politics and international law. A treaty requires ratification by two-thirds of the Senate, a threshold that is nearly impossible to achieve given the current gridlock in Washington. To bypass the Senate, Mr. Kerry and other officials have had to ensure that whatever deal emerges in Paris is not formally considered a treaty under American law.

In contrast, countries like France are looking to the United States to help lead a global consensus in Paris on measurable reductions in the emissions of the greenhouse gases that are warming the atmosphere. "I know that the United States has difficulties with its Congress, which is perfectly understandable, and I know how difficult it is," Mr. Hollande said in Malta. "But we must give the agreement in Paris -- if there is an agreement -- a binding nature, insofar as the commitments that will be made have to be honored and respected."

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News Headline: River restoration project marks decade, with 3 dams to go |

Outlet Full Name: Advocate Online, The
News Text: ...and hurt insects, fish and other wildlife downstream. It was "thermal pollution," Winkler said. But the mammoth, aged dam is gone, taken...

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News Headline: Removal of Dam on West River Underway |

Outlet Full Name: ecoRI.org
News Text: ...by Save the Sound, a bi-state program of the Connecticut Fund for the Environment. "This project transforms the landscape to yield a...

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News Headline: Solar systems at Joel and Eliot schools in Clinton expected to bring down bills |

Outlet Full Name: Middletown Press, The
News Text: ...this fall at Joel and Eliot schools. Installed and owned by Greenskies Renewable Energy LLC of Middletown at no cost to the town,...

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News Headline: Dirty soil plan holds up housing development at former Hamden Middle School |

Outlet Full Name: New Haven Register
News Text: ...in 2000 after concerns about the soil, which is contaminated with lead and arsenic. Since then, the entire 18-block area around the school...

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News Headline: New transfer station in Ansonia on the way |

Outlet Full Name: New Haven Register
News Text: ...collection more efficient and reduce overall transportation costs, air emissions, energy use, truck traffic and road wear and tear. He...

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News Headline: Cuomo Rejects Plan for Offshore Gas Port |

Outlet Full Name: New York Times, The
News Text: Gov. Andrew M. Cuomo rejected a proposal on Thursday to build the first port for liquefied natural gas in New York State, saying it would pose a threat to

the environment and make an inviting target for terrorists.

Mr. Cuomo's decision comes after years of often bitter debate over a bid by Liberty Natural Gas, an energy company, to construct an underwater buoy system and pipeline, 19 miles from Jones Beach on Long Island.

The company argued that the project, known as Port Ambrose, would save consumers millions of dollars in home heating costs, provide a vital supply of natural gas to the region and help reduce dependence on coal and oil.

Opponents, however, argued that the project's potential dangers were greater than any possible gains.

"My administration carefully reviewed this project from all angles, and we have determined that the security and economic risks far outweigh any potential benefits," Mr. Cuomo, a Democrat, said in a statement. He added that Hurricane Sandy in 2012 "taught us how quickly things can go from bad to worse when major infrastructure fails -- and the potential for disaster with this project during extreme weather or amid other security risks is simply unacceptable."

The project, which was designed only for the importation of gas, would have consisted of two submerged buoys 30 feet above the seabed.

A vessel with its cold cargo of liquid gas would connect to a buoy during the winter months. Over several days, the vessel would heat the liquid to return it to its gaseous state, and deliver natural gas through the buoy, a new pipeline and an existing pipeline.

Each delivery would provide an average of 400 million cubic feet of natural gas per day -- enough to heat and power some 1.5 million homes, according to the project's website.

Roger Whelan, the chief executive of Liberty, said the company was "disappointed and very surprised" by the decision. On its website, the company sought to explain why the concerns of environmentalists and others were unwarranted.

The company said that "the buoy and ship system is designed and proven to withstand rough storm and sea conditions, including hurricane conditions."

In the event of a storm like Hurricane Sandy, the company said the vessel could disconnect from the buoy and pipeline system and head out to sea to avoid the storm.

Skeptics thought the port would eventually provide a way to export gas and raise the appeal of fracking, a controversial method of extracting natural gas from the ground.

Mr. Cuomo, in a letter to the federal Maritime Administration, said he found the

company's arguments unpersuasive. He said that in addition to security concerns and the potential that a storm could cause "catastrophic" damage, the project could have an immediate negative effect on the squid and scallop industries as well as conflict with an offshore wind farm proposed by the New York Power Authority.

Speaking to reporters after a news conference where he announced his decision to reject the proposal, Mr. Cuomo said that he could not simply take the company at its word about the dangers a significant storm could pose.

"I've been around too long, I've heard that one too many times, 'Don't worry, nothing can happen,'" he said. "Yeah, that's when I worry."

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News Headline: Middletown Applying For Brownfield Grants |

Outlet Full Name: Hartford Courant Online
News Text: ...that face the Connecticut River. The property is contaminated by lead, asbestos and antimony that will need to be cleaned up, and an...

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News Headline: Dairy farmers say they're not only source of lake pollution |

Outlet Full Name: Associated Press
News Text: ST. ALBANS, Vt. (AP) - Dairy farmers in northwestern Vermont told the state Agency of Agriculture on Thursday that they back state efforts to reduce phosphorus pollution, but say they are not the only source of the pollution in Lake Champlain.

About 50 farmers, clean water advocates and lakefront property owners turned out for a public hearing on possibly additional rules for reducing phosphorus pollution from farms in the Missisquoi Bay Basin.

"The lake situation is not entirely the farmers' responsibility," said Bill Rowell, of Sheldon. "But in the last year I feel that the state of Vermont and a lot of the public has come up with a sentiment levied at the farmer to make the farmer feel unwelcome. And I don't think that's being responsible on the part of the population or the state.

The state says 40 percent of the phosphorous flowing into Lake Champlain comes from farms; the rest comes from roads, parking lots and discharges from municipal wastewater treatment plants.

Many people who spoke at the hearing said they were in favor of Agriculture Secretary Chuck Ross requiring farmers to abide by best management practices to reduce pollution while acknowledging that other sources also need to be addressed.

Gerard Sparacino said he and his wife assumed when they bought their camp in Highgate Springs in 2003 that the state would take the appropriate steps to reduce the phosphorus loads that feed the toxic blue-green algae blooms in Missisquoi Bay. But he said the blooms have increased, with this summer being the worst.

"We were unable to enter the water, even to kayak, for over two consecutive months," he said.

Ross had previously rejected a petition in November 2014 filed, by an environmental group that asked that farmers in the basin to be required to follow best management practices, such as expanded vegetated buffers, manure injection and incorporation into fields and cover cropping.

The Conservation Law Foundation appealed that decision and the organization and the agency reached a tentative agreement in late August aimed at settling the lawsuit. Under the agreement, Ross is considering withdrawing his rejection of the foundation's petition, and held the hearing to gather comments before deciding what to do.

If he withdraws his earlier decision, the agency would assess farms in the watershed to determine if and what infrastructure and conservation measures are needed to prevent pollutants from entering waterways.

Some assessments might conclude that best management practices aren't necessary because the required agriculture practices related to nutrient management, manure storage and buffer zones between crops and waterways that are part of the state's new water quality law are sufficient.

But when best management practices are needed, farms would be required to develop a plan and have one year to start implementing it and up to 10 years to complete it, the agency said. That timeline could be extended if a farm is seeking public assistance and not enough is available, the agency said.

Rowell said best management practices will help to indemnify the farmer.

"Listen, we understand the lake needs to be cleaned up. The farmer has demonstrated an unprecedented willingness to do that," he said.

The agency will continue to take written comments through Nov. 23.

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News Headline: Great Bay waterkeeper critical of Portsmouth's sewer plant delays |

Outlet Full Name: Hampton Union - Online, The
News Text: ...called on city officials to move forward on building the city's secondary wastewater treatment plant by May 2017. “This whole process...

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News Headline: EPA WATER SRF 'NEEDS' SURVEY IN LIMBO AS CONGRESS WEIGHS FY16 BUDGET |

Outlet Full Name: Inside EPA
News Text: EPA's long-delayed survey of water infrastructure "needs" that some state officials say could help make the case for boosting the agency's clean water state revolving fund (SRF) that pays for infrastructure upgrades remains in limbo, making it unlikely the study could influence pending talks in Congress over fiscal year 2016 funding.

An updated report on the states' infrastructure needs "could certainly help" make the case for more SRF spending, says one state source. EPA is supposed to publish a new needs survey every four years, but the 2012 study has been stalled in White House Office of Management and Budget (OMB) review for much of 2015 and has shown no signs of moving before Congress' Dec. 11 deadline to pass a spending bill, sources say.

"If it's just been sitting at OMB, probably no work has been done on it," the state source says -- making it highly doubtful that the survey could play any role in influencing potential changes to the SRFs in FY16.

Under a budget deal signed Nov. 2 by President Obama, discretionary spending caps are due to rise by $50 billion in FY16, potentially freeing up more money for EPA programs including the SRFs.

But it is unclear whether legislators will actually use the opportunity to reverse cuts to the clean water and drinking water SRF accounts that Republican leaders in both the House and Senate proposed earlier this year.

"My question would be what appetite there is in Congress to have any of that additional cap allocated to EPA. . . . If there's limited additional funding, I'm not sure it's a fait accompli that it will go to the states," the state source says.

Under the House's scrapped FY16 plan, EPA's clean water SRF would have been cut by $430 million or 30 percent, from the current $1.45 billion to $1.02 billion, while

the drinking water SRF would have dropped from its current $906 million funding to $757 million, a 16 percent cut.

The Senate's FY16 bill for EPA sought slightly smaller cuts, aiming to reduce the clean water SRF to $1.04 billion, and the drinking water SRF to $775 million.

But Republican subcommittee leaders said those cuts were forced by the overall spending caps they faced rather than being the product of specific opposition to the SRFs. Therefore, the deal's increased overall spending limit could mean more money for the infrastructure loans.

"The idea that they wanted to fund it [the SRF] more is encouraging . . . it'd be good to hold them to that word, for sure," the state source says.

The Clean Water Act requires EPA and states to submit data to the Clean Water Needs Survey every four years on publicly owned treatment works, stormwater and combined sewer overflow facilities, nonpoint source pollution control projects and decentralized wastewater management.

According to EPA's website, the survey asks states to estimate their financial needs to address water quality projects, including the population their facilities serve and their current nonpoint source pollution control best management practices -- all of which factors into the overall need for SRF loans.

But while data was gathered for the 2012 survey, EPA has yet to publish its final report that could be used in funding calculations or cited to Congress. Observers in the wastewater utility sector have said they believe the delay is partly because EPA is still crafting recommendations for reworking the equations that dictate states' SRF allocations in response to a Congressional mandate (Inside EPA, June 5).

If the new formula gives the survey more weight, that in turn would exacerbate any complications that would result if the survey data turns out to be flawed, which sources believe is likely.

Since the current allocation formula relies only slightly on the needs survey, states have little incentive to ensure that their submissions are complete or fully accurate, utility sources have said. -- David LaRoss

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News Headline: EPA ASKS NORTH DAKOTA COURT TO STAY CWA SUIT PENDING 6TH CIRCUIT RULING |

Outlet Full Name: Inside EPA
News Text: EPA is asking the U.S. District Court for the District of North Dakota to

stay a lawsuit filed by 11 states over the agency's Clean Water Act (CWA) jurisdiction rule until the U.S. Court of Appeals for the 6th Circuit rules on whether it has power to hear suits over the rule, arguing that a stay is vital to avoid creating duplicative litigation.

Litigation over the rule -- which EPA jointly crafted with the Army Corps of Engineers -- is proceeding in federal appellate and district courts, even as some lawmakers eye legislation that would force the agencies to scrap the policy. A coalition of farming, building and other industry organizations is urging Democratic senators that voted against such a measure to change their position and force the agencies to craft a new rule to define the CWA's scope.

The CWA rule released earlier this year is designed to resolve uncertainty about the reach of the law following Supreme Court rulings that created competing tests for jurisdiction. But critics, including the states that have filed suit over the policy, argue that it expands the scope of the law far beyond what Congress intended.

A group of 11 states filed suit over the rule in the district court in North Dakota. In that case, Chief District Judge Ralph Erickson in August held that district courts have authority over the rule and granted an injunction against the rule's implementation that applies only within the borders of the 11 states suing in North Dakota. But EPA is now arguing that the court should stay the suit pending a decision from the 6th Circuit.

The appellate court will hear oral argument Dec. 8 in consolidated litigation over the CWA rule, weighing the question of whether suits should be heard in that court or first heard in district courts.

The Department of Justice (DOJ) on EPA's behalf in the North Dakota litigation, filed by that state and 10 others, argues in a Nov. 9 reply brief, "There is no reason to proceed on this issue when the Sixth Circuit is poised to opine on the jurisdictional question," and therefore the court should stay the lawsuit. Relevant documents are available on InsideEPA.com. (Doc. ID: 186465)

DOJ refutes the states' argument that the litigation should proceed because a decision by the 6th Circuit will bind the states because a favorable ruling for EPA in the appellate court means the district court suits could be dismissed. "The Court need not decide in this motion for a stay whether the Sixth Circuit's decision has binding effect because, at a minimum, the Sixth Circuit's decision (and its reasoning) will be highly informative," the brief says.

DOJ previously filed briefs in at least eight district courts on Oct. 13 and 14 asking judges to hold proceedings until the 6th Circuit decides which courts have the power to consider suits over the CWA rule. The 11th Circuit is also weighing whether challenges to the rule belong in federal district or appeals court.

Under the CWA only challenges to specific types of rules must be initiated at the appellate level, while others should be brought to district court. But it is unclear which category a rule governing the reach of the act falls under, which has led challengers to file an array of suits at both levels of federal courts.

Critics of the CWA rule continue to file lawsuits in various courts, with the American Exploration & Mining Association filing suit Nov. 9 in the D. C. Circuit. The filing notes uncertainty over which court has jurisdiction to hear the challenges and says that the lawsuit is being filed "out of an abundance of caution."

Meanwhile, a coalition of farming, building, and other industry groups Nov. 10 sent a letter to Senate Democrats urging them to reconsider their opposition to S. 1140, a bipartisan bill that would force EPA and the Corps to withdrawal the final rule and craft a new draft based on extensive public outreach.

The letter asks Democratic Sens. Chris Coons (DE), Tom Carper (DE), Tim Kaine (VA), Mark Warner (VA), Bill Nelson (FL), Dianne Feinstein (CA), Brian Schatz (HI), Jon Tester (MT) and Sen. Angus King (I-ME) who caucuses with Democrats, to reconsider support for S. 1140. The letter is signed by a host of state and local Chambers of Commerce, home builders, farm bureau and other groups, including the Florida Farm Bureau Federation, the Maine Arborist Association, the Montana Building Industry Association and other organizations.

The senators in a Nov. 3 letter to EPA and the Corps urged the agencies to resolve confusion about the rule's implementation, warning that if the agencies fail to provide such clarity then they could potentially support measures to force revisions to the rule such as a bill that failed in a recent floor vote.

In the industry coalition's letter, the groups say, "No amount of the "clearer and concise implementation guidance" you call for in your letter can address the flaws in the final rule, because, unless and until a court of law orders it vacated or remanded, EPA will assert the final promulgated rule is the law of the land. The letter asks the lawmakers to "reconsider" support for S. 1140 when the Senate again takes up the issue.

S. 1140, by Sen. John Barrasso (R-WY), failed in a 57-41 vote on a motion to invoke cloture that would have allowed the legislation to proceed to a floor vote. The eight Democratic senators and King who wrote the recent letter to EPA and Corps say they are not ruling out supporting a similar bill in the future. -- Bridget DiCosmo

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News Headline: EPA SEEKS INPUT ON OPTIONS TO CONTROL FOREST ROADS' STORMWATER RUNOFF |

Outlet Full Name: Inside EPA
News Text: EPA as part of a recent settlement with environmentalists is asking for information about existing federal, state and other programs designed to control stormwater runoff from roads on forest lands, seeking to determine whether federal regulations are needed -- while cautioning that it has not made any decision to craft such rules.

In a Nov. 10 Federal Register notice, EPA says the data it is seeking will help inform its next steps with the settlement, which resolved litigation filed by advocates claiming the Clean Water Act (CWA) requires the agency to regulate forest roads. "This notice does not imply that EPA has made any decision to do so," says the agency, which will take comment for 60 days following publication of the notice. The notice is available on InsideEPA.com. (Doc. ID: 186357)

"EPA is considering the implementation, effectiveness, and scope of existing programs in addressing water quality impacts attributable to stormwater discharges from forest roads prior to making any decision," the notice says, and the agency will assess existing federal, state, local and other programs in its review.

The settlement, which involved both revisions to EPA's general permit for small municipal separate storm sewer systems and consideration of federal regulation of forest road runoff, requires the agency to issue a determination by May 26 on whether and if necessary how, it should regulate stormwater discharges from forest roads under CWA (Inside EPA, Oct. 23).

EPA and advocates reached the settlement to resolve In re: Environmental Defense Center (EDC) and Natural Resources Defense Council, a case where environmentalists sought to enforce a 2003 ruling from the U.S. Court of Appeals for the 9th Circuit in EDC v. EPA. The 2003 ruling remanded to EPA the question of whether the CWA requires the agency to regulate forest roads, instructing the agency "to consider in an appropriate proceeding" environmentalists' petition.

Under the agreement, EPA will issue a regulatory determination after it takes public comment on "the effectiveness of existing federal and State regulatory and non-regulatory programs as well as private third-party certification programs."

In the Register notice, EPA says that while it collected similar information in 2012 it "understands that there may have been improvements and additions since that time."

The agency is prohibited by a 2014 amendment to the CWA from requiring a National Pollutant Discharge Elimination System (NPDES) permit for stormwater discharges from forest roads associated with silvicultural activities, although the agency retains the authority under CWA section 402(p)(6) to regulate designated stormwater discharges in other ways, such as establishing requirements for state stormwater management programs that include deadlines and performance standards (Inside EPA, Jan. 31, 2014).

EPA says that in assessing whether federal regulation is needed, the agency is considering the effectiveness of existing programs in addressing water quality impacts attributable to stormwater discharges from forest roads, including federal, state, local, tribal, third-party certifications, and combinations of these approaches, as well as voluntary best management practice (BMP)-based approaches.

The agency says in the notice that four key considerations for managing stormwater discharges should be considered in determining whether a federal rule is necessary: (1) the advantage of leveraging existing strategies that work, including existing effective federal, state, local, tribal, private, and voluntary BMP-based programs; (2) the utility of addressing site-specific factors; (3) the need to prioritize actions; and (4) the benefits of accountability measures.

EPA says state and tribal programs vary in their substantive level of protection, specificity and enforceability, noting that 15 states have established mandatory BMPs for forest roads and the remaining 35 states allow for voluntary implementation of BMPs to control stormwater.

"For example, the California program resembles a permit program and is mandatory, whereas Florida relies primarily on voluntary compliance with state-approved road BMPs," the notice says.

The agency requests comments regarding the implementation, effectiveness and scope of state and tribal programs "in preventing or minimizing forest road environmental impacts on water quality," as well as which elements are regarded as necessary for an effective program.

Federal agencies, such as the Forest Service and the Bureau of Land Management, have also established programs to manage stormwater discharges from forest roads on federal lands, the notice says. And forestry organizations, such as the Sustainable Forestry Initiative and Forest Stewardship Council, have developed non-governmental third-party certification programs to address water quality impacts from forest roads, the notice says.

In terms of addressing site-specific factors, EPA asks for additional information that would assist it in evaluating various approaches, noting that the "selection of appropriate management strategies and BMPs can vary based on site-specific factors, including topography, road design, soils, geologic factors, road use, road maintenance schedule, and climate."

Specifically, EPA seeks information on approaches that have been or could be applied nationally regardless of forest road type and ownership, as well as which approaches might be best targeted to specific locations.

On the issue of prioritizing actions, the agency says it recognizes that protecting

beneficial uses such as fish spawning or public water supply may be a high priority in some areas while reducing impacts to waters listed as impaired or included in an existing total maximum daily load might be a high priority in other areas. Therefore, "EPA requests information on how existing programs identify and determine where to allocate resources to prioritize high quality, or pristine, waters or alternatively, impaired waters, or how to prioritize focus on certain forest roads that may be more problematic than others."

The fourth key element of a successful stormwater control approach is accountability, and EPA says it seeks information on programs that use "accountability measures such as monitoring, reporting, necessary updates, and consequences for failure to adhere to the objectives of the management program."

EPA uses the term "forest road" to mean a road located on forested land and the term "logging road" to mean a forest road that is used to support logging activities. But neither term is defined in regulation, and EPA says it welcomes comment on whether and how the agency should define these terms.

The agency also invites comments on what additional measures, consistent with federal law, could be implemented in existing programs to increase water quality protection from forest roads stormwater discharges where necessary. -- Lara Beaven

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